

APPENDIX

Supreme Court, U. S.  
**FILED**

NOV 29 1977

MICHAEL RODAK, JR., CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1977

**No. 77-52**

UNITED STATES OF AMERICA,

—v.—

RICHARD T. FORD

*Petitioner*

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 8, 1977  
CERTIORARI GRANTED OCTOBER 3, 1977

**In the Supreme Court of the United States**

OCTOBER TERM, 1977

**No. 77-52**

UNITED STATES OF AMERICA,

*Petitioner*

—v.—

RICHARD T. FORD

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

**I N D E X**

	Page
Docket Entries .....	1
Complaint, November 11, 1971 .....	6
Writ of <i>Habeas Corpus Ad Prosequendum</i> , March 25, 1974 .....	8
Government's Notice of Readiness for Trial .....	12
Indictment .....	14
Portions of Proceedings of April 1, 1974 .....	18
Portions of Proceedings of April 5, 1974 .....	23
Portions of Proceedings of April 15, 1974 (A.M.) .....	28
Portions of Proceedings of April 15, 1975 (P.M.) .....	32
Portions of Proceedings of April 25, 1974 .....	36
Government's Motion for Adjournment of Trial, May 16, 1974 .....	48

	Page
Portions of Proceedings of May 22, 1974 .....	61
Letter of Assistant United States Attorney Jed S. Rakoff to Respondent's Counsel, June 3, 1974 .....	66
Portions of Proceedings of October 16, 1974 .....	67
Government's Motion for Adjournment of Trial, November 1, 1974 .....	71
Respondent's Motion to Dismiss the Indictment, November 4, 1974 .....	83
Portions of Transcript of Proceedings, February 18, 1975....	92
Letter of Assistant United States Attorney Don D. Buchwald to Respondent's Counsel, March 28, 1975 .....	95
Letter of Assistant United States Attorney Don D. Buchwald to Respondent's Counsel, April 28, 1975 .....	96
Affidavit for Writ of <i>Habeas Corpus Ad Prosequendum</i> , Au- gust 8, 1975 .....	98
Respondent's Motion to Dismiss the Indictment, August 29, 1975 .....	105
Portions of the Trial Proceedings, September 2, 1975.....	106
Portions of the Trial Proceedings, September 3, 1975 .....	106
Portions of the Trial Proceedings, September 5, 1975 .....	112
Portions of Sentence Proceedings, October 14, 1975 .....	115
Order Granting Certiorari .....	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Crim. 279

UNITED STATES OF AMERICA

*v.*

RICHARD THOMPSON FORD,  
a/k/a Victor A. Thomas, a/k/a John A. August

DOCKET ENTRIES

DATE	PROCEEDINGS
3-21-74	Filed indictment.
4-1-74	Deft Ford appears (atty not present) Court directs a plea of not guilty Case assigned to Bauman, J. Deft Remanded. Deft produced on writ. Tenney, J.
4-1-74	Filed Govt's. notice of readiness for trial.
4-3-74	Filed affdvt and notice of motion for certain physical exemplars, to be furnish to USA by deft.
10-14-75	The deft having been convicted of four counts of a superceding indictment, 74 Cr. 336, and sentenced this date with respect to each count, the within indictment is DISMISSED for failure to prosecute. . . . Motley, J. . . .

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Crim. 336 (S)

UNITED STATES OF AMERICA

v.

JAMES PATRICK FLYNN  
RICHARD THOMAS FORD,  
a/k/a Vincent A. Thomas, a/k/a John A. August

DOCKET ENTRIES

DATE	PROCEEDINGS
4-3-74	Filed indictment. (Superseding 74Cr279 and assigned to Bauman, J.)
4-5-74	Deft. prod. on Writ. No appearance by counsel. Pleading adjd to 4-15-74, Deft. consent to being fingerprinted. Assignment of counsel adjd. until 4-8-74. Writ adjd. to 4-15-74. TENNEY, J.
4-5-74	James P. Flynn—B/W ordered. RICHARD T. FORD. Deft. (Atty Present) produced on writ. PLEADS NOT GUILTY. 10 days for motions. BAUMAN, J.
4-5-74	JAMES P. FLYNN—B/W issued.
4-25-74	RICHARD T. FORD—(Atty Present) Produced on Writ, Trial set for May 28-74. Writ adj to 5-28-74. Court held deft. in civil contempt. BAUMAN, J.
5-1-74	Filed notice of appearance by Robert Florsheim, 10 Columbus Cir. NYC., 586-3300.

DATE	PROCEEDINGS
5-17-74	Filed Govt. notice of motion to adjourn trial as to deft. Ford.
5-16-74	Filed one sealed envelope ordered sealed and placed in vault Room 602. BAUMAN, J.
5-22-74	Filed MEMO END on Govt. motion filed 5-17-74. Motion granted. Trial dated Aug. 21-74. So Ordered. BAUMAN, J.
	* * * *
9-30-74	RICHARD T. FORD—Filed affdvt. & notice of motion for an order directing the Govt. to furnish all exculpatory evidence
11-4-74	JAMES PATRICK FLYNN—Filed 1 envelope ordered sealed and impounded and placed in vault in rm. 602 . . . Motley, J.
11-6-74	RICHARD T. FORD.—Filed memo endorsed on motion filed: For the reasons set forth, in the record this date, The within motion is denied, So ordered Motley, J.
11-6-74	RICHARD T. FORD.—Filed memo endorsed on motion: The within motion is granted.
	THE TRIAL OF THIS ACTION IS SCHEDULED to begin on Feb. 18, 1975 as to deft. Ford, So ordered. Motley, J.
11-4-74	Govt's motion to adjourn trial to 2-18-75 Granted. Deft Fords motion to dismiss indictment for lack of speedy trial DENIED . . . MOTLEY, J.
	* * * *
8-8-75	RICHARD FORD—Filed affdvt. of D.D. Buchwald, AUSA in support of a writ . . . Ret. 9-2-75.
8-20-75	Filed Govt's requests to charge. . .

DATE	PROCEEDINGS
9-4-75	RICHARD T. FORD—Filed notice of motion to dismiss the indictment . . . With memo endorsed . . . . The motion to dismiss for lack of speedy trial denied . . . Motley, J. . . .m/n
9-2-75	RICHARD THOMSON FORD—Jury trial began before Motley, J.
9-3-75	Trial cont'd.
9-4-75	Trial cont'd.
9-5-75	Trial cont'd.
9-8-75	Trial cont'd.
9-9-75	Trial cont'd. and concluded . . . Deft Guilty on all counts . . . P.S.I. ordered Sent. 10-14-75 . . . Writ satisfied . . . . Motley, J.
9-12-75	James Patrick FLYNN Closed statistically because <input checked="" type="checkbox"/> defendant <input type="checkbox"/> co-defendant <input type="checkbox"/> witness is a fugitive. In all other respects this case is still pending.
10-14-75	RICHARD THOMSON FORD—Filed Judgment (Atty. Ronald Chisholm, present) the deft is committed for imprisonment for a period of FIVE YEARS on each of counts 1, 2, 3 and 4 to run concurrently with each other . . . It is recommended that the Attorney Gen'l. pursuant to Section 4082 of Ti. 18, U.S. Code, arrange to have this sentence served concurrently with sentence deft is presently serving at Mass. State Prison, in so far as the time that can be served concurrently can be served . . . MOTLEY, J. . . . Ent. on 10-15-75.
11-6-75	R. T. FORD—Filed commitment & entered return Deft. delivered to MASS CORR. INSTITUTION.

\* \* \* \*

DATE	PROCEEDINGS
05-24-76	R. T. FORD—Filed notice of appeal from the judgment of conviction entered on the 14th day of October 1975 with memo end, Leave to appeal in forma pauperis is hereby granted; ordered that this appeal be filed nunc pro tunc as of October 20, 1975. MOTLEY, J. Mailed notice to deft. M.C.I. Norfolk P.O. Box 43 Norfolk, Mass. 02056 & U.S. Atty.

\* \* \* \*



Approved: \_\_\_\_\_

M. BLANE MICHAEL  
Assistant United States Attorney

Before: HONORABLE GREGORY J. POTTER  
United States Magistrate  
Southern District of New York

\_\_\_\_\_  
UNITED STATES OF AMERICA

—v—

RICHARD THOMPSON FORD, DEFENDANT

\_\_\_\_\_  
COMPLAINT

Violation of 18 U.S.C. §§ 2113(a) and 2

SOUTHERN DISTRICT OF NEW YORK, ss:

MICHAEL NEVILLE, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, United States Department of Justice, and charges as follows:

On or about the 20th day of October, 1971, in the Southern District of New York, RICHARD THOMPSON FORD, the defendant, unlawfully, wilfully and knowingly, by force and violence and intimidation did take, from the person and presence of tellers of the Orange County Trust Company, Silver Lake Branch, Town of Wallkill, Route 211, Middletown, New York, certain sums of money belonging to and in the care, custody, control, management and possession of said bank, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation.

The bases for deponent's knowledge and for the foregoing charge are in part, as follows: Investigations con-

ducted in the course of his official duties; a bystander who observed the getaway car was shown 14 photographs; from the group of photographs the bystander identified the photograph of defendant as the driver of the getaway car.

WHEREFORE, the deponent prays that a warrant may issue for the apprehension of the above named defendant and that he may be arrested and imprisoned, or bailed, as the case may be.

\_\_\_\_\_  
MICHAEL NEVILLE

Sworn to before me this 11th day of November, 1971.

TO THE PRESIDENT OF THE UNITED STATES

[Filed Jun. 26, 1974]

TO: WARDEN

MASSACHUSETTS CORRECTIONAL  
INSTITUTION  
WALPOLE, MASSACHUSETTS  
and United States Marshal  
Southern District of New York,  
District of Massachusetts

GREETING: 74 Cr. 279

YOU ARE HEREBY COMMANDED to have the body of RICHARD THOMSON FORD now detained in the Massachusetts Correctional Institution Walpole, Massachusetts under your custody as it is said, under safe and secure conduct before the Judges of our District Court within and for the Southern District of New York, at the United States Court House, Foley Square, New York, New York, on April 1, 1974 at 10:30 o'clock in the forenoon, there to appear and plead to Indictment 74 Cr. 279, and immediately after the said RICHARD THOMSON FORD shall have been discharged or convicted and sentenced on said indictment, that you return him to the said Massachusetts Correctional Institution, Walpole, Massachusetts under safe and secure conduct, and have you then and there this writ.

WITNESS the Honorable DAVID N. EDELSTEIN, Chief Judge of the United States District Court for the Southern District of New York, at the United States Court House, Foley Square, New York, N.Y., this 25th day of March, 1974.

/s/ [Illegible]  
Clerk  
United States District Court  
Southern District of New York

The within writ is hereby allowed.

/s/ Constance Baker Motley  
United States District Judge

June 25, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA

—v—

RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas,"  
a/k/a "John A. August," DEFENDANT

---

WRIT OF HABEAS CORPUS  
AD PROSEQUENDUM ISSUE

74 Cr. 279

PAUL J. CURRAN  
United States Attorney  
Attorney for U.S.A.

30 March 74—I hereby certify and return that I have partially fulfilled this writ by transporting the within named Richard Thomson Ford from Walpole, Massachusetts Correctional Institution to Federal Detention House, West St., N.Y.C. and left original writ with Warden, FDH, West St., N.Y.C.

[Illegible]  
U.S. Marshal SDNY

by [Illegible]  
Dus. M., SDNY

6-14-74—I have this day received Richard T. Ford from FDH N.Y., N.Y. and on this same day remanded him to MCI, Walpole, Mass.

/s/ John A. Birknes, Jr.  
/s/ [Illegible]  
Dep.

USA-33s-523—Notice of Readiness for Trial  
 Rev. 12/3/70  
 JSR:ew

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

74 Cr. 279

UNITED STATES OF AMERICA

—v—

RICHARD THOMSON FORD  
 a/k/a "Vincent A. Thomas,"  
 a/k/a "John A. August," DEFENDANT

NOTICE OF READINESS FOR TRIAL

SIRS:

PLEASE TAKE NOTICE that the United States will be ready for trial in this case as soon as the matter can be reached by the Court on or after April 1, 1974 subject to receiving ten days' advance notice of the actual date for trial.

Dated: New York, New York  
 April 1, 1974

Yours, etc.,

PAUL J. CURRAN  
 United States Attorney for the  
 Southern District of New York  
 Attorney for the United States of America

By: \_\_\_\_\_  
 JED S. RAKOFF (264-6420)  
 Assistant United States Attorney

TO: HONORABLE ARNOLD BAUMAN  
 United States District Judge

RONALD J. CHISHOLM, ESQ.  
 Three Center Plaza  
 Boston, Mass. 02108



JSR:ew  
71-3397

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Crim 336(S)

[Filed Apr. 3, 1974]

UNITED STATES OF AMERICA

—v—

JAMES PATRICK FLYNN and  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas,"  
a/k/a "John A. August," DEFENDANTS

INDICTMENT

COUNT ONE

The Grand Jury charges:

In or about October, 1971, in the Southern District of New York and elsewhere, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly did conspire and agree with each other and with other persons to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 3212, 2113(a) and 924 (c) (1).

It was part of this conspiracy that JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August) the defendants, would unlawfully, wilfully and knowingly transport in interstate commerce from Boston, Massachusetts to Middletown, New York, a motor vehicle, to wit, a Blue 1971 Plymouth Fury III bearing Massachusetts registration 43965F, knowing this motor vehicle to have been stolen.

It was further part of this conspiracy that JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly, by force and violence and by intimidation, would take from the person and presence of another, money in the approximate amount of \$203,938, belonging to, and in the care, custody, control, management and possession of the Orange County Trust Company, Route 211, Middletown, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

It was further part of this conspiracy that JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly would use firearms, to wit, a shotgun and two handguns, to commit a felony for which they may be prosecuted in a court of the United States, namely, the felony set forth in Count Three of this Indictment.

OVERT ACTS

In furtherance of this conspiracy, and to effect its objects, the following overt acts, among others, were committed by the defendants in the Southern District of New York:

1. On or about October 17, 1971, the defendant RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August) resided at the "Sugar's Bungalows," Jersey Avenue, Greenwood Lake, New York under the assumed name of Vincent A. Thomas.

2. On or about October 18, 1971, the defendant JAMES PATRICK FLYNN resided in Room 123 of the Holiday Inn, Middletown, New York, a room then registered under the fictitious name of Robert P. Barry of Lynn, Massachusetts.

3. On or about October 20, 1971, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August),

the defendants, entered the Orange County Trust Company, Route 211, Middletown, New York, wearing masks and gloves and carrying firearms.

4. On or about October 20, 1971, JAMES PATRICK FLYNN and Richard THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, exited from a beige 1972 Plymouth Fury III with tan vinyl top and entered a blue 1971 Plymouth Fury III, in the Middletown Senior High School parking lot.

(Title 18, United States Code, 371.)

### COUNT TWO

The Grand Jury further charges:

On or about the 18th day of October, 1971, in the Southern District of New York and elsewhere, JAMES PATRICK FLYNN and RICHARD THOMSON FORD, (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly did transport in interstate commerce from Boston, Massachusetts to Middletown, New York, a motor vehicle to wit, a blue 1971 Plymouth Fury III bearing Massachusetts registration 43965F, knowing this motor vehicle to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

### COUNT THREE

The Grand Jury further charges:

On or about the 20th day of October, 1971, in the Southern District of New York, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly, by force and violence and by intimidation, did take from the person and presence of another, money in the approximate amount of \$203,938, belonging to, and in the care, custody, control, management and possession of the Orange County Trust Company, Route 211, Middletown, New

York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

### COUNT FOUR

The Grand Jury further charges:

On or about the 20th day of October, 1971, in the Southern District of New York, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly did use firearms, to wit, a shotgun and two handguns, to commit a felony for which they may be prosecuted in a court of the United States, namely, the felony set forth in Count Three of this Indictment.

(Title 18, United States Code, Sections 924(c) (1) and 2.)

/s/ Donald J. O. Shea  
Foreman

/s/ Paul J. Curran

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Cr. 279

UNITED STATES OF AMERICA

—v—

RICHARD THOMPSON FORD, DEFENDANT

New York, N.Y.  
April 1, 1974  
10:30 am  
Room 506

Before:

Hon. Charles H. Tenney, District Judge.

APPEARANCES:

Paul J. Curran, Esq., United States Attorney  
Jed, Rakoff, Esq.: Assistant U.S. Attorney, of counsel.  
(No appearance for defendant)

[2] THE CLERK: Richard Thompson Ford.

MR. RAKOFF: Jed Rakoff for the government, your Honor.

Mr. Ford is here pursuant to a writ. He is presently detained in Massachusetts. He does not appear to have counsel.

THE COURT: Can you afford counsel?

THE DEFENDANT: Well, it seems to me I have been here for 42 hours in Federal custody. In that time I asked the authorities if I could make a phone call to my lawyer to tell them I was in New York, and what charges were brought against me, and they refused me 6 times, 7 times to make a phone call so that is why I

do not have an attorney. At two o'clock Saturday afternoon I was told I was going to New York for the first time.

THE COURT: Do you have anybody representing you in Massachusetts?

THE DEFENDANT: Yes; I have a Mr. Chisholm; he isn't my counsel now but I plan to hire him. If I can't get in touch with him, I know he can.

MR. RAKOFF: Your Honor, if Mr. Chisholm already represents a Mr. Flynn, another suspect in this case, I think there is almost certain to be a conflict [3] of interest.

THE DEFENDANT: Well, your Honor—

THE COURT: I will enter a plea of not guilty.

THE DEFENDANT: Your Honor, could you tell me what the charges are?

MR. RAKOFF: Your Honor, I am now handing over to the defendant a copy of the indictment (handing to defendant).

THE DEFENDANT: If your Honor pleases, if it please the court, may I ask something else? I am going to hire a lawyer from Massachusetts, and I was hoping to be returned to Massachusetts as soon as possible so I will have ample time to prepare my defense, since I am going to hire a lawyer there in Massachusetts.

MR. RAKOFF: Your Honor, I think that is a matter that ought to be addressed to the judge who it is assigned to.

THE COURT: Well, I will enter a not guilty plea to the counts, and he will take up the matter of an attorney for you.

THE DEFENDANT: Your Honor, I am not going to take an attorney from this city and a public defender. [4] I have talked to Mr. Chisholm recently and there is a possibility that I will take him as the attorney—if not, one of his associates. It is my wish.

THE COURT: What is the difficulty in getting ahold of Mr. Chisholm right now?

THE DEFENDANT: Well, they won't let me make a phone call. I haven't been allowed to make a phone call



in 42 hours. They keep giving me excuses—"Well, the social worker isn't here, and this is long distance."

THE COURT: I will direct that you be permitted to make a phone call.

THE DEFENDANT: And also I would like to be able to make a phone call to my wife—she doesn't know where I am.

THE COURT: Certainly; you can call your lawyer.

THE DEFENDANT: Thank you.

THE CLERK: This has been assigned to Judge Bauman.

MR. RAKOFF: Your Honor, there are several other matters. One is, I ask the writ to be adjourned until the question of counsel can be straightened out.

THE COURT: I will adjourn the writ.

[5] MR. RAKOFF: Secondly, your Honor—

THE DEPUTY MARSHAL: How much?

MR. RAKOFF: Ten days, your Honor.

THE DEFENDANT: Your Honor, it is really hard on me sitting here. I live in Massachusetts; my wife is in Massachusetts.

THE COURT: Get in touch with your lawyer, which I am allowing you to be able to do, and if you can be extradited you will have somebody representing you.

THE DEFENDANT: You mean I could be sent back to Massachusetts as soon as possible?

THE COURT: Well, if you have a lawyer represent you here, yes.

I will adjourn the writ for one week, to April 8th.

MR. RAKOFF: Your Honor, another matter, particularly in view of the desire of Mr. Ford to go back to Massachusetts, we would ask that today, at the time of fingerprinting and photographing, that Mr. Ford also be directed to give hair samples and to give handwriting samples to an agent of the FBI who is present for the purpose of taking such samples.

[6] THE COURT: Before he leaves, when he is represented by a lawyer; if he is going to be here for another week, in the meantime he will get in touch with Mr. Chisholm and communicate with him and he can be present.

THE DEFENDANT: Your Honor, I have one more question—somebody about a co-defendant. Could I have his name so I could tell Mr. Chisholm?

THE COURT: Didn't you get a copy of the indictment?

MR. RAKOFF: He is not a co-defendant. There is another suspect in this case, Mr. Flynn, who has previously been before the grand jury and represented by Mr. Chisholm.

THE DEFENDANT: Well, am I indicted on a charge?

MR. RAKOFF: Yes.

THE DEFENDANT: And there is no co-defendant so far as right now.

MR. RAKOFF: That is correct.

DEPUTY MARSHAL: Your Honor, that is still prints and photographs for now?

THE COURT: Yes, and the hair samples and [7] the handwriting samples later.

(Further proceedings later as follows, in open court);

MR. RAKOFF: Your Honor, I have one other matter concerning Mr. Ford; just a few moments ago I understand from the Marshal that he brought him back because he refuses to cooperate with the fingerprinting department.

THE COURT: What is the problem?

THE COURT: Your Honor, maybe the Marshal would state it.

DEPUTY MARSHAL: We took Mr. Ford downstairs. He refused to give any information to fill out the fingerprint card and he also refused to be fingerprinted.

THE COURT: You have to be fingerprinted. I have delayed any action so far as hair clippings and the writing samples. That is standard procedure. I recognize the fact that you probably have been fingerprinted in Massachusetts, but you are facing charges here also. I suggest that you comply with the standard practice.

THE DEFENDANT: Your Honor, I talked to Mr. [8] Chisholm and he is going to represent me. He advised me not to take fingerprints or photos.

THE COURT: You have already talked to him?



THE DEFENDANT: Yes; he is going to try to visit me tomorrow or Wednesday.

THE COURT: All right.

THE DEFENDANT: And when he is here I will be more than happy to take fingerprints.

THE COURT: All right; can you defer it until he gets down here. If there is any problem when his counsel gets here, notify me and I will talk to counsel.

MR. RAKOFF: Your Honor, just to clarify the matter—

You did talk to Mr. Chisholm?

THE DEFENDANT: Yes.

MR. RAKOFF: And he agreed to represent you?

THE DEFENDANT: Yes.

THE COURT: That being the case, I will defer it until his counsel gets here; okay?

MR. RAKOFF: Very good, your Honor.

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 CR. 279

---

UNITED STATES OF AMERICA

—vs—

RICHARD THOMPSON FORD

---

Before: HON. CHARLES E. TENNEY, United States  
District Judge

5 April 1974

Appearances:

For the Government: RICHARD HOSKINS, Assistant  
United States Attorney

---

[2] THE CLERK: United States of America versus  
Richard Thomson Ford.

MR. HOSKINS: Your Honour, now that we are all here and the marshals were planning to bring Mr. Ford up as well, and that's probably—

THE COURT: All right. What is this matter?

MR. HOSKINS: What I am going to do is, there has been a superceding indictment, that is the first thing, and the second thing, I am going to request an adjournment of the writ to April 15th, which is the date on which defendant is expected to plead on the superceding indictment before Judge Bauman.

THE COURT: This has already been assigned out to Judge Bauman?

MR. HOSKINS: Yes, sir.

THE COURT: All right. Well, I will come back down, then.

MR. HOSKINS: All right, Your Honor.

(Recess)

THE CLERK: United States of America versus Richard Thomson Ford.

MR. HOSKINS: Your Honour, this matter is on today after an adjournment on Monday, and I have four applications I would like to make in connection with this case. The first [3] thing is to make sure that the defendant is informed that there has been a superceding indictment filed, the superceding indictment number is 74 CR 336. The previous indictment is 74 CR 279, and I want the record to reflect that I am now giving the defendant a copy of the superceding, the new indictment (handing).

The second matter is that this new indictment has been set down for arraignment before Judge Bauman at 9:30 a.m. on April 15th, which is a week from Monday, and I would like to apply to have the writ with respect to this defendant adjourned to April 15th.

THE COURT: I have the writ here. Is the defendant represented by an attorney yet?

MR. HOSKINS: I am not aware, Your Honour, whether he is or not. I do have—let me just say this—

THE COURT: I thought he said he had gotten in touch with some—

MR. HOSKINS: Mr. Chisholm?

THE COURT: Mr. Chisholm up in Boston, or something.

MR. HOSKINS: Mr. Rakoff, the Assistant in charge of this case, spoke to Mr. Chisholm on Wednesday, and Mr. Chisholm told Mr. Rakoff that at this moment Mr. Chisholm has not decided whether to represent Mr. Ford or Mr. Flynn, the co-defendant in this superceding indictment, so that at this [4] moment he cannot for sure represent Mr. Ford, and in connection with that I want the defendant to know that The Government consents to his making whatever long distance calls he might have to make to Boston to secure counsel, because it is important that he have counsel on April 15th when he pleads to the superceding indictment.

If he wants to call Mr. Chisholm or anybody else in Boston, that is fine with us, because we realize that he has an obligation to get counsel between now and April 15th.

THE DEFENDANT: Your Honour.

THE COURT: Yes?

THE DEFENDANT: Mr. Chisholm was here Wednesday—Tuesday, and I thought he was going to represent me. But he didn't know about Mr. Flynn being indicted. This is the first I know of it. And I wish I could call Mr. Chisholm, you know, and inform him.

THE COURT: All right, you will be given permission to call him.

MR. HOSKINS: The only thing that I would have the defendant understand as well as possible, is that it is important that he have counsel, whether it is Mr. Chisholm or somebody, by April 15th.

THE COURT: Yes.

MR. HOSKINS: The only other application I have, [5] Your Honour, is that at this time once again I apply for the defendant to be fingerprinted and photographed. We brought that up Monday. I believe Your Honour stated that—

THE COURT: Well, if he is going to have counsel, I thought we would delay it. He is going to call. And if nothing is done about this by Monday, about having counsel, well, then I am directing that he be fingerprinted. He has had the opportunity to get counsel, but I will delay it until Monday.

MR. HOSKINS: All right. That is Monday, April 8th?

THE COURT: Yes. Put it on the calendar for Monday.

MR. HOSKINS: All right.

THE COURT: I am not going to keep putting this off.

THE DEFENDANT: Well, Your Honour, if it pleases the Court, as far as being fingerprinted, I am willing to be fingerprinted, but as far as photos, Monday I was—it was fifteen, approximately fifteen or twenty photos taken of me by the U.S. marshals, and F.B.I. Now I

feel that this is a reasonable number of photos taken.

THE COURT: All right, fingerprint him. I don't know about the photographs. If they have taken photographs, let's not harass the fellow by keeping on taking them.

THE DEFENDANT: Now they have another motion in front of the Court, they want to take some more photographs of me. [6] I feel twenty photos is enough to identify me. If they don't know what I look like by now—

THE COURT: Yes, but I don't know what the circumstances are.

THE DEFENDANT: I am willing to be photoed, I am willing to write my signature down, and as far as—like I'll give my description, that's all. I won't give any other information.

THE COURT: Well, all right, we will wait and see on Monday, but in the meantime I suggest that you be fingerprinted if you have got no objection to that, and you are going to be fingerprinted anyway, because I am sure your attorney is not going to be in any position to object to it.

THE DEFENDANT: Yes, I understand.

THE COURT: So let's take care of that, the matter of photographs. If they need further photographs we can take that up on Monday.

MR. HOSKINS: Very well, Your Honour.

THE COURT: But the important thing is for you to get counsel.

THE DEFENDANT: Yes, sir.

THE COURT: Whether it is Mr. Chisolm or whether it is somebody else. Possibly Mr. Chisolm can recommend some- [7] body, too.

THE DEFENDANT: Yes. Well, Monday—

THE COURT: You will be back here on Monday. I am going to adjourn the writ until the 15th as The Government requested, for this superceding indictment. Now, is there any other application The Government has?

MR. HOSKINS: None, Your Honour.

THE COURT: Very well. But he will be produced on Monday. Or do you want me to adjourn the writ until Monday?

MR. HOSKINS: Well, why don't we go ahead and adjourn the writ until the 15th?

THE COURT: All right, but be sure you bring him in Monday.

MR. HOSKINS: Yes, we will.

THE DEFENDANT: You are going to bring me back Monday, the, Your Honour?

THE COURT: You have to be back here Monday to let me know about your counsel. In the meantime you have permission of the Court, with the consent of The Government, to make any phone calls you want to counsel in connection with the retainer of counsel.

THE DEFENDANT: Yes, sir.

THE COURT: And there is no need, I assume—[7a] well, this will be assigned to Judge Bauman, at any rate.

MR. HOSKINS: Yes. As I understand it he has the other indictment, it has been assigned to him.

THE COURT: All right.

---



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Cr. 336

UNITED STATES OF AMERICA

*against*

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a VINCENT A. THOMAS,  
a/k/a JOHN A. AUGUST

April 15, 1974  
9:50 a.m.

Before: HON. ARNOLD BAUMAN, DJ,

For the Government: Jed S. Rakoff, Esq.

For defendant Ford: Ronald Chisholm, Esq.

[2] case called.

MR. RAKOFF: Your Honor, the Government is here and defendant Ford is here together with his counsel. I do not see defendant Flynn present nor any counsel representing him.

I not for the record that a notice was sent to Mr. Flynn on April 4 and because the time on that notice was not clearly specified, I then sent a personal letter as well to Mr. Flynn.

THE COURT: Could I see the indictment, please. This is Mr. Ford who is before me?

MR. RAKOFF: Yes.

THE COURT: Who is missing?

MR. RAKOFF: Mr. Flynn, the other defendant together with any counsel he may have.

THE COURT: What indictment number?

MR. RAKOFF: 74 Cr. 336, which is a superceding indictment.

THE COURT: Why should I not issue a bench warrant for Mr. Flynn?

MR. RAKOFF: I see no reason and the government would make an application for a bench warrant at this time.

THE COURT: Where is Mr. Flynn, is he on bail?

MR. RAKOFF: Mr. Flynn is in Boston. He has not been arrested. Today was the day for pleading. As I say, [3] a notice was sent and in addition, a personal letter was sent making sure it was 9:30 rather than the usual time of 10:30 done in part I.

THE COURT: Is this another bank robbery case?

MR. RAKOFF: Yes, your Honor, with also a charge relating to interstate transportation of stolen vehicle and use of a firearm.

THE COURT: Bench warrant will issue for Mr. Flynn.

Do I understand that the government sent Mr. Flynn a notice saying he was indicted for bank robbery and inviting him to show up?

MR. RAKOFF: Mr. Flynn had previously been before the grand jury in this case and he was aware of our investigation and he did appear to have roots in the community. We may have been foolish in not arresting him but he had a house in Weymouth and he lived there with his wife and child. It did appear he had roots.

THE COURT: In any event, Mr. Ford is with us today and I gather he has not pleaded as yet?

MR. RAKOFF: Not to this indictment.

THE COURT: Are you counsel for Mr. Ford?

MR. CHISHOLM: Yes. Ronald Chisholm.

THE COURT: Mr. Chisholm, do you want the charge [4] read to Mr. Ford or do you waive the reading?

MR. CHISHOLM: I would waive the reading of the indictment.

THE COURT: How does the defendant plead to this charge, guilty or not guilty?

THE DEFENDANT: I plead not guilty.



MR. RAKOFF: If I may clarify one matter. Mr. Chisholm is from Boston. The government has no objection to his appearing in this case, but under the rules of this Court, a local attorney must file a notice of readiness for the purpose of serving papers and I previously called Mr. Chisholm about a week and a half ago and I informed him of that requirement. I don't know whether he has done anything about that.

MR. CHISHOLM: If the Court wishes, I will endeavor to obtain local counsel.

THE COURT: It is a Court rule. It isn't a matter of my wish. That is the rule.

MR. CHISHOLM: I find no fault with the rule.

THE COURT: Good, I am happy to learn that. The fact is, I will give you a week in which to find some New York counterpart to act as an effective mail drop.

MR. CHISHOLM: May we have ten days for pre-trial motions?

[5] THE COURT: Yes.

MR. RAKOFF: Has bail been fixed on the other indictment?

MR. RAKOFF: The other defendant—Mr. Ford is here on a writ. He is presently serving a term of four to eight years so I believe the question of bail is not before us.

Your Honor, there is some question before you. Approximately two weeks ago I filed with your Honor and with Mr. Chisholm and also personal with Mr. Ford, a motion asking that various physical exemplars are taken from Mr. Ford including handwriting samples, hair samples, fingerprint samples and photographs.

My understanding is that the photographs were taken but that Mr. Ford stated that he would not submit to any of the others at least until his counsel is present. His counsel is present today and I would ask that your Honor direct that those exemplars are furnished today to a agent of the FBI who I could arrange to come down here sometime in the morning.

THE COURT: Yes, Mr. Chisholm?

MR. CHISHOLM: If your Honor please, I did receive a copy of the notice of this motion from the government's

[6] attorney but I have not had the opportunity to discuss it with Mr. Ford. He has been presently at I guess the West Street Detention Center and I started to discuss it with him this morning briefly but I have not had sufficient time to discuss it with him.

THE COURT: I will tell you what. I have to charge a jury in another case and listen to summation. Do you think if we waited until 2:15 you would have an adequate opportunity to talk with him?

MR. CHISHOLM: I don't need nearly that much time.

THE COURT: How about 12 o'clock?

MR. CHISHOLM: That would be plenty of time. A half hour.

THE COURT: I can't interrupt my jury trial. 12 o'clock.

Will the marshal have the defendant up here by 12 o'clock.

You might check my courtroom to see whether I am ready to take it.

. . . .

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Cr. 336

UNITED STATES OF AMERICA

*against*

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a VINCENT A. THOMAS,  
a/k/a JOHN A. AUGUST

April 15, 1974  
2:15 p.m.

Before: HON. ARNOLD BAUMAN, D.J.

For the Government: Jed S. Rakoff, Esq.

For defendant Ford: Ronald Chisholm, Esq.

[2] Case called.

MR. RAKOFF: Your Honor, at this time the Government would renew its motion to have the defendant give hair samples and handwriting and handprinting samples and I understand that the fingerprints that we asked for were taken in a prior case so they won't be necessary to be taken here.

MR. CHISHOLM: If it please your Honor, I have discussed this problem with Mr. Ford and it is Mr. Ford's position that he declines to furnish the exemplars as requested by the government's attorney.

THE COURT: Let's take them one at a time. What are they?

MR. RAKOFF: They are really just two. One is hair samples taken from both sides of the head and from the front.

THE COURT: Let's hold that to one side.

MR. RAKOFF: The other is handwriting and hand printing of the alphabet and the number zero through nine. And a simple short paragraph.

THE COURT: There is no question in my mind that he is required by law to do that and I order you to do that; is that clear?

THE DEFENDANT: Your Honor, I respectfully [3] decline to do it.

THE COURT: All right. I hold you in contempt of Court.

Now, with respect to the hair samples, what is the authority on which the government relies?

MR. RAKOFF: Your Honor, this is no different from any other thing like a fingerprint. We are taking simply a few hairs.

THE COURT: Can you give me any case?

MR. RAKOFF: Yes, your Honor.

THE COURT: That talks about hair samples?

MR. RAKOFF: Your Honor, I believe, and if you will give me a moment I will check, United States v. Fertella does. Well, I see that Fertella refers to blood samples. It is not hair samples, but let me say in this very case, the codefendant James Flynn was ordered to give hair samples by Judge Pollack and he complied with that order.

THE COURT: Blood samples are required, are they not?

MR. RAKOFF: Yes.

THE COURT: I am going to withdraw that finding of contempt. I will give you one week in which to furnish these samples. The law requires you to do that. Is that clear? I will ask you to talk to your lawyer and within [4] one week I will have you back here and I warn you, that if you do not comply with the Court's order, I shall find you in contempt of Court.

The Court orders that you give the handwriting and the hair samples that have been referred to; do you understand that so far?

THE DEFENDANT: Yes, I do.

THE COURT: If you fail to do so within one week, I shall find you in contempt for deliberately flouting the authority of this court; do you understand that?

THE DEFENDANT: Yes.

MR. RAKOFF: I believe the only other matter is, Mr. Ford is here on a writ which was originally adjourned just until today.

THE COURT: I will adjourn the writ for one week. Is there anything else that has to be done?

MR. RAKOFF: Not at this time.

THE COURT: You wanted ten days in which to make motions. I will adjourn the writ ten days. Have your motions returnable in ten days, please.

MR. RAKOFF: There is one other matter, I am sorry I forgot.

With respect to the co-defendant James Flynn, [5] Mr. Flynn was represented by Mr. Chisholm before the grand jury and I am wondering if the Court would inquire of Mr. Chisholm if he knows Mr. Flynn's most recent address as of the last time he contacted him.

THE COURT: Mr. Chisholm?

MR. CHISHOLM: I understand it to be an address in Weymouth, Mass. and I think it is Hibiscus Street or Avenue.

MR. RAKOFF: The last address we have from him is 115 Hibiscus. That is as of three weeks ago. Have you had an opportunity to contact him since that time at that address?

MR. CHISHOLM: If the government attorney is suggesting—

THE COURT: He is asking you, do you know of any newer address than that?

MR. CHISHOLM: No I don't.

MR. RAKOFF: The last thing is, could we inquire as to the last date that Mr. Chisholm contacted with him so we can get an idea?

THE COURT: I am not at all sure he is required to indicate that.

MR. RAKOFF: I see.

THE COURT: I want you to consult with your client, please and tell him what is going to happen if [6] he persists in flouting my order.

MR. CHISHOLM: I will, your Honor.

THE COURT: I shall deal with that as I see fit.

MR. RAKOFF: That is all, your Honor.

THE COURT: Thank you, gentlemen.

\* \* \* \*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 CRIM 336 (S)

THE UNITED STATES OF AMERICA

—vs—

RICHARD THOMSON FORD,  
a/k/a VINCENT A. THOMAS,  
a/k/a JOHN A. AUGUST

25 April, 1974

Before: HON. ARNOLD BAUMAN, United States District Judge

Appearances:

For the Government: JEB RAKOFF, Assistant United States Attorney

For the Defendant: RONALD J. CHISHOLM, ESQ.

BY: ROBERT FLORSHEIM

[2] THE CLERK: United States of America versus Richard Thomas Ford. Mr. Rakoff.

MR. RAKOFF: Your Honour, I—

THE COURT: Is he still not here, or what?

MR. RAKOFF: Still not here, Your Honour, and both the clerk and myself have called repeatedly to the marshal.

THE COURT: I understand the truck broke down for the four hundredth time this month.

MR. RAKOFF: Your Honour, there are a few book-keeping matters we could dispose of in the meantime, if that is all right with Your Honour.

THE COURT: Yes.

MR. RAKOFF: One thing is, Your Honour, this morning I have been handed the notice of appearance of a local counsel pursuant to our general rules by Mr. Chisolm, and the local counsel I note for the record is Mr. Robert Florsheim, 10 Columbus Circle, in New York City.

Also, Your Honour, this morning about half hour ago I was handed three discovery motions by the defense counsel, Mr. Chisolm. The Government consents to large portions of those, and I won't take Your Honour's time with the parts we consent to.

There are a number of items, though, that we oppose and perhaps they could be settled now.

[3] THE COURT: Yes.

MR. RAKOFF: With respect first, Your Honour, to the, what is denominated the motion of defendant Richard Ford for discovery and inspection—

THE COURT: I have that here.

MR. RAKOFF: There are four items there The Government consents to, one and two. With respect to number three, which is to inspect and copy recorded testimony of the defendant Richard Ford and co-defendants before a grand jury, we consent, of course, to Richard Ford.

THE COURT: The remainder is denied.

MR. RAKOFF: Thank you, Your Honour. And as to number four, we consent, but we would ask that we have at least two weeks to produce the documents for inspection and copying. Some of them are not presently in the possession of the U.S. Attorney's office.

THE COURT: All right.

MR. RAKOFF: With respect to the motion of Defendant Richard Ford to discover identification procedures, The Government does not object to showing the photo spreads that were shown to various people.

We do object to revealing the persons to whom the photo spreads were shown, because one of the defend-



ants here is a fugitive armed and dangerous, and we feel there [4] is a danger for that reason.

THE COURT: All right.

MR. RAKOFF: And, finally, with respect to the—

THE COURT: By all right I want the record to indicate that I accept The Government's representation and I agree with The Government's view. Yes?

MR. RAKOFF: With respect to the motion to be furnished with evidence favourable to the accused, there are five specifications of what the defendant apparently regards as Brady material, number two and three, namely statements which would reasonably tend to show that the accused did not commit the offense and evidence which would reasonably show that the defendant did not commit the offense, we do consent to.

The others appear to be an attempt to either elicit the names of The Government's witnesses, or to get thirty-five hundred material in advance of trial, and we would oppose it for those reasons.

THE COURT: Well, I will accept that at this time, but in terms of rap-sheets of any of the prospective witnesses I will direct that a reasonable time before the trial they be furnished to defendant's counsel.

MR. RAKOFF: I will be glad to do that, Your Honour.

THE COURT: Now, you have agreed to two and three.

[5] MR. RAKOFF: Yes, sir, and we oppose—

THE COURT: Four apparently calls for thirty-five hundred material, and they will get that at the appropriate time.

MR. RAKOFF: Right.

THE COURT: As they will with five pursuant to Section 3500. Yes.

MR. RAKOFF: And number one, to the extent that it is not contained in two and three would seem to be just simply 3500—

THE COURT: Well, with respect to one, I said that they will get the rap-sheets reasonably in advance of the trial. "Reasonably" being perhaps a week before the trial.

MR. RAKOFF: Fine, Your Honour. That is all we have now, Your Honour, until the defendant appears.

THE COURT: I will tell you what I am going to do, rather than sit around here waiting for this all morning, I think I am going to set this matter down for twelve noon. What do we have to do with the defendants here?

MR. RAKOFF: Your Honour, the defendant Richard Ford was before you ten days ago and refused to give handwriting, hand printing and hair samples. Your Honour at that point gave him ten days to comply and he has not complied as of today, and so the matter is before you [6] for contempt, or whatever other procedures Your Honour deems appropriate.

THE COURT: Yes. Well, if he does not comply he would then obviously be in civil contempt and could be held during the duration of the proceeding, as I understand the civil contempt law.

MR. RAKOFF: Your Honour, I would respectfully suggest that since he is already serving a four to eight year sentence that that would have no effect.

THE COURT: Not very much, would it?

MR. RAKOFF: And that Your Honour could make a finding that therefore civil contempt is not an appropriate remedy, has in effect been tried for the last ten days without effect, and that a criminal contempt could be entered and a sentence in that case could be made consecutive to the sentence that he is already serving.

THE COURT: I will deal with that problem at the appropriate time. Do you represent this man?

MR. CHISOLM: Yes, Your Honour.

THE COURT: Yes. Well, have him know that if he persists in his contumacious conduct I shall clearly hold him in criminal contempt and the possibility of his being sentenced to six months would be excellent. Just have that in mind when you consult with him.

[7] MR. CHISOLM: Yes, Your Honour. If Your Honour please, may I be heard on one of these motions?

THE COURT: Yes.

MR. CHISOLM: On the defendant's motion for discovery of identification procedures, it is my understand-

ing, if Your Honour please, that one witness was shown various photographs, including the defendant Ford, and selected that photograph as a person that was seen being involved in this in some way.

Now, my request is for the—all persons that were shown photographs and what photographs were shown to them—

THE COURT: Wait, let me stop you right there. Was the same spread shown to anybody to whom the identification from pictures became a question?

MR. RAKOFF: Your Honour, there was a photo spread that was shown to a number of people, all of whom may well be Government witnesses.

THE COURT: And was it the same photo spread?

MR. RAKOFF: Your Honour, the F.B.I. Agent who showed it is here, let me ask him.

THE COURT: Fine.

MR. RAKOFF: Your Honor, I understand that there were two photo spreads, although in fact the pictures [8] appear to have been the same. They are just copies of the same pictures, but we would be glad to make both photo spreads available.

THE COURT: Let me make this clear to you. I am not going to do anything that will identify the prospective identification witnesses to you. What I will do is to cause to be made available to you the spread of pictures so that you can see those pictures so that you can be prepared for whatever kind of identification hearings you want in the light of having seen the spread of the pictures. Is that clear? But I certainly am not going to have you told the names of the people who have made the identification, where one dangerous criminal is walking the streets.

Now, I am not—I have not lost my senses yet and I suggest that I am not about to do that.

MR. CHISOLM: Well, by that does Your Honour mean that referring, I am sure, to the co-defendant, if that person is either apprehended or surrenders or whatever, that The Court's position would change on this motion? Because I think—

THE COURT: What it means is that when, as and if he is apprehended I will consider the question anew. But at the moment I will deny any application that might tend to identify identifying witnesses.

[9] MR. CHISOLM: Well, may I be heard additionally on this motion, Your Honour? Perhaps I might—if The Government has identifying witnesses I am reasonably certain that they would be produced at the trial, and what I am more concerned with is that where potential identifying witnesses that were in the area that were shown photographs that included the defendant Ford, that did not identify him, and I point out that that could be or is in the nature of exculpatory evidence, and conceivably other witnesses were in a better position to make an identification than those that did make an identification.

THE COURT: Let's first find out if there are any in that category.

MR. RAKOFF: Your Honour, there is no one to my knowledge who said, "I saw the man who did it and this, or, no one in this spread is that man." There may be, I am just not certain in my own recollection, there may one or two persons who simply were not able to make an identification, period.

THE COURT: Well, I have always taken the position that witnesses fall into three categories in a picture spread of this kind: One, those that can select the person and make the identification; the other, people [10] who can look at a spread and say, "No, the man who did it is not there"; and the third being those who look at a bunch of pictures and say, "I can't say whether the picture of the man is there or not."

Now, with respect to the third category I don't think that because a person can't pick out a picture from a group of pictures that really tells you very much about whether the defendant was there and did it or not. All it means is that shown a spread of pictures he can't make the identification.

It does not prove that face to face with the defendant he could not identify him. Or even if he could not identify him that would still not be the same category



as a person who says, "No, he was not there." Now, such a person who said that none of the people in the pictures was among the people who are charged with this crime, I would make available but Mr. Rakoff says that there are none.

MR. RAKOFF: None, Your Honour.

THE COURT: There may be one or two who will say, "Listen, I can't tell you whether his picture is here or not, I just don't know." And those I really don't feel tend to prove that your man didn't do it.

MR. CHISOLM: Well, if I may, Your Honour, I agree [11] with Your Honour, there is certainly I agree with Your Honour's analysis of three categories of identifying witnesses, but referring to the so-called third group, the ones that after being shown photographs would say that, "I can't say whether he is the person in question," those are the ones that I am, I should say, primarily concerned with at this point, because those are the ones that could in answer to The Court's position and The Government's position on a co-defendant being at large and disclosing the name of an identifying witness, of course that argument would not apply to this third classification.

THE COURT: Well, I agree with that.

MR. CHISOLM: And I say on these, Your Honour—

THE COURT: I'll tell you what. What authority, what case would you call to my attention as authority for the proposition that you're putting forward?

MR. CHISOLM: Well, I would say I don't have a case, Your Honor. I would say the due process clause of the Federal Constitution of fairness—

THE COURT: Well, I have heard of that clause, but I wonder if there is any case that you—

MR. CHISOLM: I don't know of any, Your Honour.

THE COURT: All right.

[12] MR. CHISOLM: I just think in fairness in due process, Your Honour, I would say that conceivably these persons were in a better position to make an observation and if they did not that might be evidence conceivably or undoubtedly is evidence favourable to the accused of an exculpatory nature, I would say.

THE COURT: I don't regard it as such. At any event you have made your argument in the record and should your person be convicted it is available to you.

MR. CHISOLM: Your Honour, may I just say in—

THE COURT: I don't want to hear any more about due process, because I think I have got my full dose of that for today.

MR. CHISOLM: Your Honour, on the question of the motion—

THE COURT: If you want to come back tomorrow, though, and talk about it for a half hour, I will be happy to listen.

MR. CHISOLM: With respect to these motions, The Government has agreed to furnish, I would ask, Your Honour, that The Court examine The Government's file to see whether there is any exculpatory—evidence of exculpatory nature which should be furnished to the defendant, because conceivably The Court would take a [13] different position than The Government prosecutor.

THE COURT: Let me see if I understand you. You want me to sit down with The Government's file here and go through each paper in The Government's file and pick out those that I think might tend to help your client; is that it?

MR. CHISOLM: That is of an exculpatory nature, yes, Your Honour.

THE COURT: And I take it that if you ask for it in this case then you would assume that that is my duty in every single criminal case, would you not? That if a defendant's lawyer asked me to sit down with The Government's file that it is my duty to go through those sheets one by one and look for exculpatory evidence; is that correct?

MR. CHISOLM: In those—

THE COURT: Well, I want to tell you something: that will be the day. Denied. Oh, here they are, and here he is, now.

MR. RAKOFF: Here he is, Your Honour.

(Defendant enters the Courtroom)



MR. CHISOLM: May I have an opportunity to discuss the issue with him, Your Honour? I have seen him after the last Court appearance a week ago, and—

[14] THE COURT: Yes. Do you want me to step down from the bench so you will have a reasonable time to talk with him?

MR. CHISOLM: I think five minutes will be enough, Your Honour.

THE COURT: All right. Let me know when you are ready.

(Recess)

MR. CHISOLM: If Your Honour please, I have discussed the, I guess it's the pending Government's motion, with Mr. Ford, and it is my understanding as far as—well, I think he has furnished photographs anyway at some prior date, and again he has no objection to those, but I think he has furnished a great number, and as far as the fingerprints and the full prints, I understand he will furnish those and as far as the handwriting specimens, or exemplars, I understand he will furnish those, and as far as the hair exemplars I understand he will not furnish that. That is his position.

MR. RAKOFF: Your Honour, The Government would move that the defendant be held in contempt.

THE COURT: What case do you rely on with respect to the hair exemplars?

MR. RAKOFF: Your Honour, the leading case, perhaps, [15] is the Smerber case before The Supreme Court which held—

THE COURT: Is that the one on voice exemplars?

MR. RAKOFF: No, that is the one on blood samples.

THE COURT: Oh, yes, of course.

MR. RAKOFF: And it would seem that if you can take blood samples that hair samples are much more minimal—

THE COURT: I don't think there is any question about that.

MR. RAKOFF: And, therefore, Your Honour, The Government would request that the defendant having been now given numerous opportunities to comply, and

having refused to comply, be held by Your Honour in contempt.

THE COURT: Mr. Ford, I order you to furnish a hair sample to The United States Government; do you understand that?

THE DEFENDANT: Your Honor, I decline. Respectfully decline.

THE COURT: I find you in criminal contempt of Court and I shall invoke sentence—well, I think I will follow what The Supreme Court said. At present I shall hold you in civil contempt of Court, and at the appropriate time if you persist in this I will hold you in criminal contempt of Court and I will impose a sentence upon you that will succeed the sentence which you are now serving and any [16] other sentence that may result from this case; do you understand that?

THE DEFENDANT: Yes, Your Honour.

THE COURT: All right. Now, when do you want to try this case, Mr. Chisolm?

MR. CHISOLM: Well, The Government, I think, has requested two weeks on certain discovery, and less on—

THE COURT: Let me see what Mr. Rakoff's schedule is.

MR. RAKOFF: Your Honour, there are only two matters that would prevent The Government from going to trial immediately.

THE COURT: It is a bank robbery case, isn't it?

MR. RAKOFF: Yes. The immediate problem is, Your Honour, that Mr. Flynn, the co-defendant, is a fugitive and we feel that we have a reasonably good chance of finding Mr. Flynn and thus saving The Court time by going forward with the trial of both defendants at once. We would request that we be given at least a few weeks to try to find Mr. Flynn.

THE COURT: Well, that is all right. Normally I would press you a little harder, but because he is in prison, not due to a failure of bail but because he is serving another sentence, it doesn't occur to me that the same pressure exists in this as otherwise. However, I [17] will ask counsel when he would like to try the case.

MR. CHISOLM: Well, I would like to try it the middle of May, Your Honour, and not before. I think The Government needs a couple of weeks to furnish some discovery to me.

THE COURT: All right. Is that agreeable?

MR. RAKOFF: Well, Your Honour—

THE COURT: I mean, it is a bank robbery case.

MR. RAKOFF: Yes.

THE COURT: It is a one-bank bank robbery as opposed to some of the others which I have had which are seven, eight, nine and ten count bank robberies of different banks. So if I have to try the thing twice I would guess in light of my experience the trial in this case probably won't take more than three or four days at the outside.

MR. RAKOFF: That is correct, Your Honour.

THE COURT: So if I have to try it twice when they pick up the other fellow, I will.

MR. RAKOFF: Your Honour, the only other thing, it is a purely personal matter and I hesitate to mention it because of course the case can always be reassigned if necessary, I am handling the Tramonte appeal, as Your Honour may know, and the brief is scheduled to be filed [18] in that on the third week of May, and I would only ask that therefore the trial be slightly after that.

THE COURT: Well, how about—the 27th of May is Memorial Day, at least the holiday that we celebrate for Memorial Day on the Monday—how about the 28th, Mr. Chisolm?

MR. CHISOLM: That is agreeable with me, Your Honour.

THE COURT: Mr. Rakoff?

MR. RAKOFF: That's fine, Your Honour.

THE COURT: All right. The case will be tried on May 28th.

MR. RAKOFF: Your Honour, the only other business then is I gather from what Mr. Chisolm says that the defendant is willing now to give the handwriting and handprinting, and we would ask that he furnish that now to the F.B.I. Agents.

THE COURT: Yes, he has agreed to do that, and he will do it, now.

MR. RAKOFF: Thank you, Your Honour.

THE COURT: Is there anything else?

MR. RAKOFF: No, Your Honour.

THE COURT: All right. What sentence is this defendant serving now, Mr. Chisolm? It is obviously a State Court sentence.

[18a] MR. CHISOLM: Yes, Your Honour, I understand it is an eight to ten year sentence.

THE COURT: Eight to ten?

MR. CHISOLM: Yes, Your Honor, in The Commonwealth of Massachusetts State Prison.

THE COURT: All right, thank you.

MR. CHISOLM: Thank you, Your Honour.

MR. RAKOFF: Thank you, Your Honour.

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S. 74 Cr. 336 (AB)

[Filed May 17, 1974]

---

UNITED STATES OF AMERICA

—v—

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas",  
a/k/a "John A. August", DEFENDANTS

---

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that, at a time and place convenient to the Court, the Government will move this Court for an order adjourning the trial of the above-entitled case, presently scheduled for May 28, 1974, for a period of approximately 90 days or until the apprehension of the fugitive co-defendant Flynn, whichever period is shorter.

This motion is based on this notice, the annexed affidavit of Assistant United States Attorney Jed S. Rakoff for the Government, and all the papers and proceedings heretofore in this case.

Dated: New York, New York  
May 16, 1974.

Yours, etc.

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for the United States of America

By: /s/ Jed S. Rakoff  
JED S. RAKOFF  
Assistant United States Attorney

To: RONALD J. CHISHOLM, Esq.  
Three Center Plaza  
Boston, Massachusetts 02108  
(Attorney for defendant Ford)

ROBERT FLORSHEIM, Esq.  
10 Columbus Circle  
New York, New York 10019  
(Local attorney of record for defendant Ford)



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S.74 Cr. 336 (AB)

UNITED STATES OF AMERICA

—v—

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas,"  
a/k/a "John A. August," DEFENDANTS

AFFIDAVIT

STATE OF NEW YORK                     )  
COUNTY OF NEW YORK                ) ss.:  
SOUTHERN DISTRICT OF NEW YORK    )

JED S. RAKOFF, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and have responsibility for the prosecution of the above-captioned case. I make this affidavit in support of the Government's motion for an adjournment of the trial of this case, presently scheduled (as to defendant Ford) for May 28, 1974, for a period of approximately 90 days or until the apprehension of the fugitive co-defendant Flynn, whichever period is shorter.

2. The Government respectfully submits that such an adjournment would fully comport with this District's Plan for Achieving Prompt Disposition of Criminal Cases (the "Speedy Trial Rules"), would be in the best interests of justice and judicial management, and would not prejudice defendant Ford in any material respect.

I. LESS THAN TWO MONTHS OF THE SPEEDY TRIAL RULES' 'SIX MONTH PERIOD' HAS RUN.

3. Ford escaped from a Massachusetts prison sometime prior to 1970 (I believe, 1968). A Massachusetts warrant charging him with escape and assault with intent to murder issued as a result. The Government expects to prove that in 1971, while living in Greenwood Lake, New York, under the alias "Vincent A. Thomas," he joined with co-defendant Flynn and others to commit the armed bank robbery and ancillary crimes charged in the instant indictment. At any rate, a federal warrant based on a complaint charging Ford with the bank robbery was issued in 1971. Ford, however, remained a fugitive until October 11, 1973, when he was captured in Chicago under the name "John A. August."

4. Upon his capture, Ford was turned over to Massachusetts authorities to stand trial on the prior state charges, and the federal warrant was lodged as a detainer. (About this same time, Ford wrote a letter to the Southern District of New York requesting a Speedy Trial on the federal charges.) On February 8, 1974, midway through his trial in Massachusetts, Ford changed his plea to one of guilty on charges of escape, assault with intent to murder, and related charges. He was sentenced forthwith to concurrent terms of 8 to 10 years imprisonment, which term he is presently serving. The judgments were entered that same date, February 8, 1974.

5. Hence, February 8, 1974, is, at earliest, the date on which the "six-month period" under the Speedy Trial Rules began to run as to Ford.\* This is because the period prior to October 11, 1973, during which time he was a fugitive, is a period excluded from the six-month computation by virtue of Rule 5(d) of the Speedy Trial Rules, which treats as an excluded period "The period of delay resulting from the absence or unavailability of

\* The shorter, "three-month period" for detained defendants does not apply to "any defendant who is serving a term of imprisonment for another offense . . ." Rule 3 of the Speedy Trial Rules.

the defendant." Similarly, the period from October 11, 1973, until the disposition of the Massachusetts charges on February 8, 1974, is an excluded period by virtue of any of three separate provisions: Rule 5(d), *supra*; Rule 5(f), which excludes "The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial;" \*\* and, particularly, Rule 5(a), which excludes "The period of delay while proceedings concerning the defendant are pending, including but not limited to . . . trial of other charges, and the period during which such matters are *sub judice*." See, e.g., *United States v. Cangiano*, 491 F.2d 906, 909 (2d Cir. 1974).

6. On March 21, 1974, a two-count Indictment (74 Cr. 279), charging Ford with the 1971 armed bank robbery, was filed in this District Court. Ford was arraigned before Judge Tenney on April 1st at which time he refused to be fingerprinted. The case was assigned to Judge Bauman for all purposes. Also on April 1st, the Government filed a notice of readiness as to defendant Ford.

7. On April 3, 1974, the Grand Jury voted a superseding indictment, charging Ford, Flynn and others unnamed, with the bank robbery, conspiracy, and related crimes. Flynn, who had appeared before the Grand Jury in March (at which time he was represented by Ford's present attorney, Ronald Chisholm), appears to have become a fugitive immediately thereafter. As of now, he still has not been apprehended. Accordingly, none of the "six-month period" has run as to Flynn. Rule 5(d), *supra*.

8. On April 15, 1974, Ford, now represented by Mr. Chisholm, entered a not guilty plea to the present indictment. Ford was given 10 days for motions. A hearing was also held on the Government's motion (first made on April 1st) for physical exemplars; when Ford refused

\*\* The "reasonable efforts" provision, in a context such as this, appears to be satisfied by filing a detainer, as was done here. See Rule 9(b)(ii), Speedy Trial Rules.

to provide handwriting, handprinting, and hair samples, he was given one week to comply with this Court's order to furnish the same or else face contempt.

9. On April 25, 1974, following Ford's continued non-compliance with respect to the furnishing of hair samples, Ford was held in civil contempt by this Court and warned of the further possibility of criminal contempt. Also, on April 25th, this Court ruled on defendant's pre-trial motions, made that same day. But as of now, he still has not complied with this Court's order.

10. It follows that some or all of the period from April 1st to the present must be excluded from the computation of the six months period that began to run on February 8, 1974, for at least two reasons:

11. First, under Rule 5(a), there must be excluded "The period of delay while proceedings concerning the defendant are pending, including but not limited to . . . pre-trial motions . . . trial of other charges . . . and the period during which such matters are *sub judice*." The Government's pre-trial motion that defendant furnish various physical exemplars, including fingerprints, handwriting, handprinting, and hair samples, was first made orally before Judge Tenney on April 1st and then, when the case was assigned to Judge Bauman, made in writing in motion papers filed April 2, 1974. This motion, and the attendant contempt proceedings, were not completed (if, indeed, they can be said to be completed as of now, since criminal contempt proceedings against Ford are still pending unless he purges himself of his civil contempt) until April 25, 1974, when this Court found Ford in civil contempt. Thus, the period from April 1st through April 25th should be excluded from computation of the six-month period.

12. Second, Rule 5(c)(i) excludes from the six-month period of time during which "evidence material to the government's case is unavailable, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period." Clearly, the Government has exercised due diligence in an attempt to obtain evidence of defendant's



hair samples—evidence that may prove highly material if it becomes available and if a scientific comparison shows it to be similar to hairs recovered by the Government from the scenes of crimes charged in the instant indictment. There would appear to be some reasonable grounds, moreover, for believing that the defendant Ford will eventually make this evidence available, since he for some time also refused, but eventually complied, with Court orders to supply fingerprints (admittedly not nearly so vital in this case, since the bank robbers wore gloves) and handwriting and handprinting (also, admittedly, of less value on the facts of this case). Presumably, it was the hope of this Court that defendant would eventually also provide the hair samples that prompted the Court to find defendant only in civil contempt, despite his repeated and wilful refusals to furnish the hair samples, and to thus provide him with the opportunity of purging his contempt. Alternatively, even if there is no longer any reasonable expectation that defendant will supply the hair samples (or, what is the same thing, supply them in time that a pre-trial scientific comparison can be made), surely defendant is estopped from invoking the benefits of the Speedy Trial Rule when he himself is the sole cause of the unavailability of potentially crucial evidence without which the Government will be forced, through no fault of its own, to go to trial less materially prepared than it ought to be. In short, it is submitted, that pursuant to Rule 5(c)(i), there should be excluded from the six month period the entire time from April 1st through the present (and continuing), in which defendant has refused to make material evidence available—at least until such time as the Court concludes that there is no reasonable ground for supposing that such evidence will become available within a reasonable period.

13. If the entire period from April 1st through the present is excluded from the six-months computation, only 51 days of the 180 days grace-period permitted by the Speedy Trial Rules has actually run, i.e., February 9, 1974, through March 31, 1974. Even if only the period from April 1st to April 25th is excluded, still,

as of May 28th (when trial is scheduled), only 83 days of the 180 days will have run, so that a 90-day adjournment would still be very much in keeping with both the letter and the spirit of the Speedy Trial Rules. (The letter binds the Government as to being ready for trial, but does not bind the Court in actually setting a trial date, *United States v. Cacciatore*, 487 F.2d 240, 243, n. 2 (2d Cir. 1973)—though, of course, it provides a kind of guideline against which the Court can judge the reasonable bounds of its discretion.)

## II. THE INTERESTS OF JUSTICE AND SOUND JUDICIAL MANAGEMENT SUPPORT THE REQUESTED ADJOURNMENT, AND DEFENDANT IS NOT PREJUDICED BY IT.

14. The underlying fact which forces the Government to request this adjournment is that the co-defendant Flynn took flight (somewhat to the Government's surprise) at the time of his indictment and, in the few weeks that have since elapsed, has not been apprehended. While, of course, there is no guarantee that Flynn can be apprehended within any given period of adjournment, the Government respectfully submits that, given the very little time that (on any reckoning) has thus far elapsed since this case came on before the Court, the Government is entitled to a reasonable further delay in order to try to apprehend him.

15. The reasons why the fugitive status of Flynn warrants an adjournment with respect to the incarcerated co-defendant Ford are two, each of which, incidentally, constitutes grounds of delay under the Speedy Trial Rules, although even if they did not, the 90-day maximum placed on the Government's request would mean that the six-month period would not be exceeded in any event.

16. First, the need to try the case twice would put an unwarranted strain on the time and resources of the Government and this Court. This case involves no ordinary bank robbery, but rather a far-flung conspiracy which was calculated to conceal the identities of the robbers and which entailed, merely by way of preparation



for the robbery, the commission of substantive crimes in at least three States. (The robbery itself netted over \$200,000.) At present the Government, even if it puts on a "thin" case, anticipates that it will have to call a minimum of 27 witnesses from all over the country. The Government submits that sound management warrants avoidance of having not one but two trials of this length, when there is a realistic possibility that the fugitive Flynn can be apprehended and there is no compelling reason to move forward as to the non-fugitive Ford.

17. Second, of course, the Court is already aware from the Government's representation at the April 25 hearing that the fugitive Flynn is a former felon (having at least three prior convictions for such crimes as armed robbery) considered by the FBI to be armed and dangerous and thus, inherently, a potential danger to Government witnesses. Specifically, this danger was brought to the attention of this Court on April 25 in the context of defendant's motion for the names of all the Government witnesses to whom photospreads were shown. The Government opposed this motion, stating:

"We do object to revealing the persons to whom the photo spreads were shown, because one of the defendants here is a fugitive armed and dangerous, and we feel there is a danger for that reason."  
(April 25 Hearing Transcript, pp. 3-4)

In ruling in the Government's favor on this point, this Court stated to defense counsel (who, as noted, was previously counsel for the fugitive as well):

"Let me make this clear to you. I am not going to do anything that will identify the prospective identification witnesses to you. What I will do is to cause to be made available to you the spread of pictures so that you can see those pictures so that you can be prepared for whatever kind of identification hearings you want in light of having seen the spread of the pictures. Is that clear? But I certainly am not going to have you told the names of the people who have made the identification, where

one dangerous criminal is walking the streets. Now, I am not—I have not lost my senses yet and I suggest that I am not about to do that." (April 25 Hearing Transcript, p. 8)

The Government submits that these same strong considerations that prompted this Court to deny identification of the Government witnesses to defense counsel prior to the Ford trial, so long as Flynn was a fugitive, just as strongly warrant adjournment of the trial altogether while Flynn remains a fugitive and while there is no compelling reason against a few months' adjournment for the purpose of trying to apprehend the fugitive.

18. Each of the above considerations finds support in particular provisions of the Speedy Trial Rules (although it must be remembered that a 90-day adjournment, even if not "excluded" from the six-month rule computation, would not extend Ford's trial beyond the six-month period). To begin with, the general provision of Rule 5(h) providing for a "period of delay occasioned by exceptional circumstances" has been applied by our Court of Appeals to sanction delay in situations generally analogous to the present one. For example, in *United States v. Rollins*, 487 F. 2d (2d Cir. 1973), the Government, without even notifying the Court, failed to bring the case to trial within six months, partly from inexcusable inadvertence but partly because the Government's secret witness was himself under suspicion in another investigation that might be compromised if he took the stand and revealed his cooperation with the Government. The Court of Appeals, applying Rule 5(h), refused to dismiss the indictment, stating "the public interest in prompt adjudication must be balanced against competing interests." (487 F. 2d at 414). Similarly, in *United States v. Cuomo*, 479 F. 2d 688 (2d Cir. 1973), *cert. denied* — U.S. — (1974), a ninety-day adjournment to protect the safety and usefulness of an informant was held to be an "excluded period" in terms of the Speedy Trial Rules.

19. A more specific provision of the Speedy Trial Rules that is also very much in point is Rule 5(e), providing for "A reasonable period of delay when the de-

fendant is joined for trial with a co-defendant as to whom the time for trial has not run and there is good cause for not granting a severance." \* Applying this provision very recently in *United States v. Cangliano*, 491 F. 2d 906, 909, our Court of Appeals found "good cause" for not granting a severance in the mere fact that the defendant there had not specifically moved for a severance and did not, in any case, make any showing of prejudice suffered from the delay resulting from the lack of severance. Here, likewise, defendant Ford has neither specifically moved for a severance \*\* nor made any showing of prejudice from delay (as set forth below, there is no prejudice). But, additionally, in the present case there are the positive reasons to avoid severance, already set forth above, if possible, until Flynn is apprehended.

20. Finally, defendant Ford will not in any way be prejudiced by the proposed 90-day adjournment. Ford himself is just beginning the serving of several 8-10 year concurrent sentences imposed last February; his personal freedom will thus, not be in any way curtailed by the adjournment. As to the preparation of his defense, the adjournment can only aid it. In response to the defense's three extensive discovery motions (as limited by this Court's rulings on April 25), the Government has already supplied the defense with voluminous discovery, including everything this Court ordered made available to defense, except for a few telephone records and FBI laboratory reports that are presently on their

\* Rule 5(e) continues: "In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to his case." (emphasis supplied). As the Court of Appeals made clear in *Cangliano*, *infra*, this provision does not come into force with respect to a delay that would not exceed the six-month period as to either the defendant or the co-defendants. In the present case, as noted, a 90-day delay will not push the trial beyond the six month period as to either Ford or Flynn.

\*\* While, at the hearing on April 25, this Court, sua sponte, indicated that it might proceed to trial against Ford alone if Flynn were not apprehended by May 28—(hence the need for this present motion)—any actual severance ruling would have been premature on April 25 and none was made. At no time has defendant Ford moved for severance.

way to my office and will be turned over for inspection and copying just as soon as they arrive. Also, defense counsel Chisholm complained to me just yesterday (5/14) that the fact that defendant Ford was being held here in the Federal House of Detention while he (Chisholm) had his office in Boston, had made the defense's pre-trial preparation more difficult. However, if the adjournment is granted, Ford will undoubtedly be sent back to the Walpole, Massachusetts prison where he is serving his present sentence, and thus will be more easily available to Mr. Chisholm for pre-trial consultations.

WHEREFORE, the Government respectfully requests that this Court adjourn the trial of the instant case for approximately 90 days from the presently scheduled trial date (May 28, 1974) or until the apprehension of the fugitive co-defendant Flynn, whichever period is less.

/s/ Jed S. Rakoff  
Assistant United States Attorney

Sworn to before me this 16th day of May, 1974.

/s/ Gloria Calabrese  
GLORIA CALABRESE  
Notary Public, State of New York  
No. 24-0535340  
Qualified in Kings County  
Commission Expires March 30, 1975



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S. 74 Cr. 336 (AB)

[Filed May 22, 1974]

---

UNITED STATES OF AMERICA

—v—

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas,"  
a/k/a "John A. August," DEFENDANTS

---

NOTICE OF MOTION & AFFIDAVIT

---

PAUL J. CURRAN  
United States Attorney  
Attorney for USA  
Tel. 264-6420

---

5/22/74—Motion granted. Trial date Aug. 21, 1974.

BY ORDER OF

/s/ Arnold Bauman  
U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Cr. 336

---

UNITED STATES OF AMERICA

vs.

RICHARD THOMSON FORD  
a/k/a "Vincent A. Thomas"  
a/k/a "John A. August," DEFENDANT

---

Before: HONORABLE ARNOLD BAUMAN, District  
Judge.

United States Court House,  
New York, New York,  
May 22, 1974

Appearances:

PAUL J. CURRAN, Esq., United States Attorney,  
For the Government,

JED S. RAKOFF, Esq., Assistant U.S. Attorney,  
of Counsel.

RONALD CHISHOLM, Esq.,  
For the Defendant.

[2] THE COURT: I will hear you, Mr. Rakoff.

MR. RAKOFF: Your Honor, the Government submitted last week to defense attorney Chisholm and to your Honor a motion for an adjournment either until the defendant Fugitive Flynn is apprehended or for ninety days, whichever is shorter; and your Honor, the basis of our motion is, on the one hand, the Government is prejudiced by the absence of this defendant, both in having to try what will be a substantial trial in terms



of length twice, and also because of the fact that he is an armed and dangerous fugitive.

On the other hand, the defendant in custody, Mr. Ford, is not prejudiced by any adjournment.

THE COURT: He is serving another sentence, isn't he?

MR. RAKOFF: He is serving another sentence, that's correct, your Honor. The six-month rule has just barely begun to run. Even the ninety days would not put us beyond the six-month period.

Finally, your Honor, the defendant Ford to some extent has prejudiced the Government in going forward now by his contemptuous refusal to provide what could be very material evidence in the form of hair samples. [3] For all these reasons, your Honor, we would ask for an adjournment as indicated.

THE COURT: Yes, sir?

MR. CHISHOLM: If it please your Honor, first I would suggest that in October of 1973 the defendant Ford was apprehended in Illinois and taken into custody, and while in custody in Illinois, he wrote to the United States Attorney for the Southern District of New York and also to the Chief Justice for the Southern District of New York letters containing identical contents in essence, demanding a speedy trial.

Mr. Rakoff does have that letter, and I have a copy before me.

THE COURT: I think the record should indicate that within the last week or ten days the United States Attorney, Mr. Rakoff, asked leave to present an affidavit and then asked that I seal it, and I have done it, and it is made part of the record in this case, and it is sealed, and it is not available to you.

Accordingly, I regard you now as renewing your motion for a speedy trial, and I am going to grant the Government the adjournment it requests, ninety days.

Your position is noted on the record. You may expand on it if you want.

[4] MR. CHISHOLM: May I, your Honor? I had not completed my position.

THE COURT: Yes, you may.

MR. CHISHOLM: In addition to that, I suggest that on, I believe it was, April 25th of this year, the Government made essentially the same argument for a delay in the trial date without requesting any specific period of time.

THE COURT: I really think that where there are two defendants and one of them is a fugitive, that is the kind of circumstance that would require me to adjourn the case at least for a reasonable period of time so as to permit the Government to attempt to apprehend the fugitive, so that the case can be tried as to both at the same time, thereby saving judicial time, manpower, and money.

MR. CHISHOLM: Additionally, if your Honor please, I suggest to the Court the Government did receive in October from Mr. Ford a letter requesting or demanding a speedy trial, and it is indicated in the Government's motion and affidavit that he was indicted on March 21st of this year although he was not notified of that until, I believe it was, April 1st of this year.

THE COURT: The Government is still safely within [5] the six-month period, isn't it?

MR. CHISHOLM: I don't want to concede that, your Honor. I point out in the Government's argument here, Mr. Ford endeavored to have this case tried before his cases were pending in Massachusetts, although he was taken back to Massachusetts, and at that time he was proceeded against in Massachusetts.

THE COURT: That kind of option was not available to people charged with bank robbery, or what was he convicted of?

MR. RAKOFF: Escape and assault with intent to murder.

THE COURT: Escape and assault with intent to murder in Massachusetts and bank robbery here. You see, he doesn't have that option.

MR. CHISHOLM: I suggest, your Honor, he endeavored—I am pointing out to the Court he endeavored to have this case tried—

THE COURT: You may make your record.

MR. CHISHOLM: With due diligence, and the suggestion by—I think the suggestion by the Government is that because the trial in Massachusetts was in February, that it did not need to proceed against him.

Of course, the Government in this case could have [6] proceeded prior to the time that Massachusetts proceeded against him, and hypothetically, Massachusetts may not have proceeded for a year or two years, hypothetically. Would it then be the Government's position that it did not have to proceed on this case until after Massachusetts?

The Government points out that there is no prejudice to the defendant Ford, and I suggest, your Honor, there is prejudice. In Massachusetts, while serving a sentence in Massachusetts he would be eligible for a work release program, while he is not eligible with this detainer lodged against him.

THE COURT: What is his previous record, if any, before the assault with intent to murder?

MR. RAKOFF: Your Honor, I don't have the rap sheet right here, but I do at least recall that he has a conviction for armed robbery and a conviction, I believe—well, a second felony conviction. I just don't remember the exact terms of it.

THE COURT: This is the kind of fellow they are putting on work release programs in Massachusetts?

MR. CHISHOLM: I suggest—I don't want to state the policy and programs in the Commonwealth of Massachusetts. I know there is a great deal of criticism daily in the papers of them, but I don't want [7] to take sides or issues with either side on it. I just am talking about the prejudice to the defendant.

And also, in Massachusetts, your Honor, a person serving a sentence is eligible for furloughs, that is, weekend furloughs. He can go home with his wife for a weekend. They release him from the institution to come back, and this is applied to persons serving life sentences for first-degree murder, sentences under which they are not eligible for parole during their natural life, and they still are coming within this furlough program, that they are released to go home for a weekend to visit their family or wife or friends or relatives, or a long weekend if it's

a holiday, perhaps; and this is a program that is in Massachusetts; and it's, I suggest, an answer to the—this program exists—in answer to your Honor's inquiry of the defendant's background with prior convictions, that even persons with much greater or more serious records of convictions than Mr. Ford's are released on this furlough for weekends or few days or short periods of time.

Mr. Ford is eligible for that, but because of this detainer in this matter, he is being denied that, and that is certainly a prejudice to him. This is in answer to the Government's suggestion that there is no [8] prejudice to the defendant.

THE COURT: When the Government talks about prejudice, it talks about prejudice in preparation of defense of this charge. That is what they are talking about.

MR. CHISHOLM: Well, the defendant, I assume, your Honor, is entitled to a speedy trial, and that is what he is—

THE COURT: The Constitution says so.

MR. CHISHOLM: That is what is requested.

THE COURT: I think I have heard enough. I am going to set this trial down for ninety days from today.

MR. CHISHOLM: That is over the defendant's objection, if your Honor please.

THE COURT: Yes, of course.

How about August 21st?

MR. RAKOFF: That would be fine, your Honor.

THE COURT: August 21st for trial over the defendant's objection.

---



JSR:bg

June 3, 1974

Ronald J. Chisholm, Esq.  
Three Center Plaza  
Boston, Massachusetts 02108

Re: United States v. Richard Thomson Ford, et. al.,  
74 Cr. 336 (AB)

Dear Mr. Chisholm:

At our meeting of May 14, 1974, at which time I made available to you extensive discovery in this case, I mentioned that there was one item to which you were entitled which I did not yet have in my possession: the results of the comparisons done between the handwriting and handprinting of defendant Ford (your client) and a certain Holiday Inn registration (already shown to you) obtained by the Government in its investigation of this case. I have now received the FBI report relating to this comparison, as well as to comparisons made with respect to exemplars from another person involved (as you know) in this investigation, James Michael Murphy. A copy of the report is here enclosed.

This, I believe, completes the pre-trial disclosure in this case, but I will, of course, review my files shortly prior to trial (presently calendared for August 21), and, if there is any discovery which I have overlooked or which is received after today, I will make it available to you reasonably before trial.

I have conveyed to the United States Marshal here your request that defendant Ford be sent back to Walpole prison so that you can meet with him more conveniently in preparation for trial, and I have informed the Marshal that the Government consents to your request.

Yours truly,

PAUL J. CURRAN  
United States Attorney

By: \_\_\_\_\_  
JED S. RAKOFF  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Cr. 336

UNITED STATES OF AMERICA, PLAINTIFF

—vs—

RICHARD THOMSON FORD, DEFENDANT

Before: HON. CONSTANCE BAKER MOTLEY, Dis-  
trict Judge.

New York, N.Y.

October 16, 1974—4:15 p.m.

Appearances:

PAUL J. CURRAN, ESQ.,  
United States Attorney for the  
Southern District of New York;

By: STEVEN A. SCHATTEN,  
Assistant U.S. Attorney

—and—

CARL BORNSTEIN,  
Assistant U.S. Attorney (Strike Force)

RONALD CHISHOLM, ESQ.,  
Attorney for Defendant.

[2] MR. SCHATTEN: Ready for the Government,  
your Honor.

MR. CHISHOLM: Ready for the defendant, your  
Honor.



THE COURT: Mr. Chisholm, do you represent both of these defendants, Ford and Flynn?

MR. CHISHOLM: No, your Honor. I just represent the defendant Ford.

THE COURT: Who represents Flynn?

MR. SCHATTEN: My understanding is that when Mr. Flynn appeared in the courthouse previously he was represented by Mr. Chisholm. Since that time he has become a fugitive. He is currently a fugitive. Mr. Chisholm, I believe, is the only attorney of record for him. Maybe Mr. Chisholm could enlighten us.

THE COURT: Flynn is presently a fugitive?

MR. SCHATTEN: Yes.

THE COURT: We will set the trial for November 18th.

MR. SCHATTEN: Yes, your Honor.

THE COURT: We are proceeding only with Mr. Ford.

MR. SCHATTEN: Unless Mr. Flynn subsequently does not become a fugitive.

The Government's position has always been we would [3] like a joint trial in this case for reasons that we repeatedly stated at length not only before, in open court, but also in a sealed affidavit which we filed with Judge Bauman when he had the case. It would still be our position that the appropriate way to proceed in this case would be with both defendants.

We are doing everything we can, as I already pointed out, to see to it that the case proceeds with two defendants.

MR. CHISHOLM: May I clarify one point?

THE COURT: Has the defendant Flynn been a fugitive since the indictment was returned?

MR. SCHATTEN: That's correct. My understanding of the situation is that Flynn failed to appear at the time of his arraignment, and he has never been seen since.

\* \* \*

THE COURT: Mr. Chisholm, I gather you have a motion on today?

MR. CHISHOLM: Yes, your Honor.

THE COURT: What is that again?

MR. CHISHOLM: That motion is to be furnished with what I contend is exculpatory evidence.

[4] THE COURT: There are many motions in this pile. When was that filed?

MR. CHISHOLM: I believe it was September 30th, your Honor.

THE COURT: I gather a similar motion was previously filed before Judge Bauman, was it?

MR. CHISHOLM: I can clarify that, your Honor. That's not exactly correct, perhaps.

Before Judge Bauman there was a motion filed amongst others. It was a discovery motion for identifying witnesses. That motion was denied, but there was an additional motion filed before Judge Bauman, the one that entitled me to be furnished with evidence favorable to the accused, which had five parts. The judge allowed Parts 2 and 3. As a matter of fact, the Government consented to Parts 2 and 3.

Part 2 was statements which would reasonably tend to show the accused did not commit the offense charged.

Part 3 is evidence which would reasonably tend to show that the accused did not commit the offense charged.

THE COURT: Do you say both of those were allowed by Judge Bauman?

MR. CHISHOLM: Yes, your Honor. The Government consented to them. It is hard to believe that those would [5] be denied in any situation conceivable because it is clearly a request for exculpatory evidence.

After the hearings on those motions, when I did meet with the other Assistant United States Attorney who was handling the case, it was at that time that he refused to disclose, as the judge had denied the motion, the names and addresses of identifying witnesses, but under the exculpatory evidence motion, when we were discussing this, he said he did have exculpatory evidence, and that's the basis of my motion that is now before your Honor, namely, that there was a witness that did identify one of the participants in the robbery. I, for further clarification, labeled that as John Doe. As I understand it from Mr. Rakoff, this was from photographs.

Then, at a later date, some number of months later, the same person, this John Doe, identified the defendant Ford from a series of photographs, and the same person, John Doe, a number of months or a later period of time, saw a man on the street and identified him as the one he had seen participating in the robbery, the same one he had picked out of a photograph, Mr. Ford. I have labeled this person as Richard Rowe. This person was apprehended or interrogated by law enforcement officers and then was released or not taken into custody.

[6] The Government knows both the identity of John Doe and Richard Rowe. He did say that during the trial this information would be made available to me. However, your Honor, if your Honor please, if this is exculpatory evidence—and I suggest one would have to stretch one's imagination to imagine a situation of a more exculpatory evidence greater, anything more exculpatory—in other words, the defendant has many defenses, alibis, many things. Perhaps the defense the defendant can put forth is that he didn't commit the particular crime charged but somebody else did it. The defendant is entitled to prove that.

Now the Government has this witness who will identify the defendant Ford at the trial as being one of the participants in the robbery, and this same identifying witness has identified another person, a person well known to the Government, as being that one. But when it comes to trial he will say that defendant Ford was the one and this was a mis-identification. I don't suggest that's what his testimony will be exactly. I don't know. It will be something along that line.

I take the position that I am entitled to know the name of that identifying witness and the person that was identified.

I know my brother points out, and he quoted from [7] Judge Bauman when he denied the motion for identifying witnesses, but at that time this information was unknown to me, and this information was disclosed to me under the exculpatory evidence motion which was allowed, in fact, but by telling me certain facts without being

more specific as to the names of these people it does nothing.

THE COURT: I will hear from the Government in reply.

MR. SCHATTEN: May it please the Court, your Honor, as the Court has recognized, Judge Bauman, for reasons not only stated in affidavits he filed with Mr. Chisholm, but in a sealed affidavit denied any application with respect to the identification of prospective witnesses. That was 100% clear. The reasons are because, among others, James Patrick Flynn is still at large. He continues to be at large, just as he was on April 25, 1974.

Moreover, the Government would submit that even under a bare reading of Parts 2 and 3 of that provision with respect to exculpatory material, we have fully complied with our burden. We have told Mr. Chisholm—and I think Mr. Chisholm is inaccurate, as I pointed out in my affidavit—in the first place, this witness has never picked out Ford from a photographic spread. I have stated that in my affidavit, and I now state it in court.

[8] Moreover, contrary to what Mr. Chisholm says, the said Richard Rowe has satisfied law enforcement authorities that he did not participate in the robbery.

Mr. Chisholm will be afforded at the time of the trial the names of Richard Rowe and John Doe. We will even give him an opportunity to confer with these people in our office.

He has waited all this time to make the motion. We would submit that there is going to be little harm if the motion, in fact, is denied until such time as the trial takes place. It is hard to see how he would be prejudiced from this result.

Contrary to what Mr. Chisholm says, I must say there are better defenses than the one he claims to present right here and now for the simple reason that we are representing Rowe—and are satisfied—as Mr. Rakoff has already told him, that he did not participate in the robbery. He will be able to put the John Doe and Richard Rowe on the witness stand if he so desires. He will have an opportunity to talk with them during the trial.



We do feel that considerations that pertain in the Judge Bauman ruling are equally applicable now, and we would vigorously oppose having to turn those over.

Moreover, we don't see any prejudice in Mr. [9] Chisholm by not having to turn them over until the time of trial.

THE COURT: Mr. Chisholm, I will hear from you.

MR. CHISHOLM: If it please your Honor, as far as this Richard Rowe having satisfied law enforcement officials of his innocence, that may be true, but I am sure we are all aware that law enforcement officials have been mistaken in judgment from time to time. It is a subjective decision, determination.

But as far as making information available to me in the middle of the trial, that imposes an extra burden upon me on that aspect because in handling, trying, a case, as your Honor knows, there are many things on an attorney's mind. I don't know how they suggest it should be done. Should it be done at a recess at some other time when something very important also should be considered by a defendant? There may be something else that requires my attention.

Also, your Honor, I may want to subpoena John Doe. I may want to subpoena Richard Rowe as witnesses. The Government has never said it is going to use those persons.

Suppose I saw Richard Rowe and John Doe in the Government Attorney's office at some time and they never [10] produced them as witnesses. I may want to call them as witnesses. I would not have the opportunity to subpoena them. They may walk out the door after I see them. How would I produce them in the middle of the trial? These are possibilities, but independent of any of those practical arguments that I urge the Court to consider, I think it is just an absolute right that the defendant has to have exculpatory evidence disclosed to him. It should be disclosed by the Government without motion. The defendant doesn't need a motion for exculpatory evidence. It is usually filed, and the Government's duty is to disclose it as soon as it is aware of anything that is exculpatory.

THE COURT: Well, the Government has met that burden by telling you about it.

The next question is whether you have a right to have the names of these witnesses so that if they are willing they can talk to you about the case before the trial. Isn't that so? That's what we are really talking about. The Government has told you about it. They have met their obligation to tell you about any possible exculpatory evidence.

The issue now is whether you have a right to the names of those individuals. The Government claims that the names should be withheld because one of the co-defendants [11] here is a fugitive and both of these co-defendants have previously been convicted of crimes of violence.

Is that right?

MR. SCHATTEN: That's correct, your Honor.

THE COURT: I thought I read that in the Government's affidavit somewhere.

MR. SCHATTEN: That's correct.

MR. CHISHOLM: The defendant Ford is in custody serving an eight-year sentence that the Commonwealth of Massachusetts imposed earlier this year. I think his activities are restrained. He has a detainer on him for this charge. There is no way he could be released for five or six years anyway.

THE COURT: What about Flynn?

MR. CHISHOLM: Your Honor, I suggest the Government has not met its burden except in maybe only in part by disclosing to me there is this situation. The Government has not told me very much except it does have some exculpatory evidence. If they have that evidence, they must disclose it, but they have not done that other than in a vague way. I suggest to the Court that this situation does exist. That's not disclosing—

THE COURT: The Government asks the identity be protected until the time of trial for the reasons indicated, [12] and the question is whether that is a sufficient reason to deny you the identity of the prospective witness until time of trial. It seems to me clear that that is,



since Flynn is a fugitive and previously convicted of a crime of violence, reasonable.

MR. CHISHOLM: I respectfully disagree with the Court's conclusion on that. There has been no showing here by the Government that anyone has attempted to interfere in any way with the liberty or safety of any witness for the Government. There is no suggestion here that there is any information, anything remote, that anyone even considered such a thing. The very fact that someone has been convicted of a crime of violence—I am concerned with the defendant Ford, he is in custody, and these are his rights that I am asking the Court to consider, and not the rights of the defendant Flynn, if he has any.

THE COURT: Also, the Government has represented that it has investigated this Richard Rowe and is satisfied that he did not participate in the robbery. They have made that representation.

You would have to be suggesting that the Government is interested in having your client convicted for a crime committed by somebody else. We have to accept the Government's representation that it investigated this [13] Richard Rowe and found that he could not be indicted for this crime and brought to trial.

MR. CHISHOLM: I don't know, your Honor, other than what the Government attorney has told your Honor here, and I heard a similar statement by Mr. Rakoff before. Someone has determined that. I don't know what that determination was based upon. I don't know to what extent the Government investigated this so-called Richard Rowe or why the Government determined that he was not involved. Perhaps he was in a penal institution at the time. That would be a reason. I don't know about other alibis.

THE COURT: That goes as to whether there is a real need to have this name, in any event. We are not here for mere exercise. There ought to be some reason why this name ought to be disclosed if it would possibly help your defendant.

MR. CHISHOLM: So that I, a representative of the defendant, an investigator—not me—could have an op-

portunity to interview these persons and discuss the facts relevant to this case.

THE COURT: Normally you would not have the opportunity unless the witness was willing to be interviewed. The suggestion here is that it is not a normal situation because of the possible threat to the life of anybody who [14] might be a witness, that is this Richard Rowe might disclose who John Doe is, and I gather he is the one that the Government is trying to protect?

MR. SCHATTEN: Yes, your Honor. Your Honor hit the nail right on the head. That's exactly the Government's position.

For the reasons that were set forth by Judge Bauman, for the reasons set forth in our sealed affidavit, for the reasons set forth in this affidavit that I filed, I respectfully urge your Honor to rule as your Honor is inclined.

MR. CHISHOLM: May I just state one point, your Honor?

The Government's attorney suggested on two or three occasions this afternoon that Judge Bauman has denied this. Judge Bauman denied a bare discovery motion just for identification, a discovery of identification proceedings. He did allow part of the exculpatory evidence motion, and that is what I am directing the Court's attention to. It is that part of the exculpatory evidence motion, that the Government's attorney disclose to me the information about John Doe and Richard Rowe.

Before we were talking about identifying witnesses. Suppose we have a person that identifies the defendant Ford [15] from photographs. That part was denied. It was unknown. It was not brought to the Court's attention when Judge Bauman heard these motions. I was unaware of it until afterwards that one of these identifying witnesses identified somebody else as the defendant Ford, but, presumably, this person will pick out the defendant Ford as the robber. But he previously identified another person. That was never brought to Judge Bauman's attention, and that clearly is exculpatory evidence. I am not asking for all witnesses, all identifying witnesses, because that motion has been denied, but this

is a very limited motion before your Honor for this John Doe, the identifying witness, and Richard Rowe, the one he identified. It is just very limited.

Judge Bauman had no knowledge of this at the time he ruled on the motion.

THE COURT: With respect to your present motion for an order directing the Government to turn over to you the names of John Doe and Richard Rowe, that motion is denied for the reasons already indicated on the record, and that is that one of the co-defendants in this case, James Patrick Flynn, is a fugitive and has been since the arraignment in this case, and he has previously been convicted of a crime of violence.

[17] THE COURT: How many witnesses do you think you will have and how long will this trial take?

MR. SCHATTEN: I have conferred with my colleague, Mr. Bornstein, who is slightly more familiar with certain aspects of the case. We are trying to work out stipulations with Mr. Chisholm. Failing his willingness to work out stipulations, I would have to tell the Court there would be somewhere around 30 or 35 witnesses. Hopefully we could stipulate to certain items and I would hope Mr. Chisholm would act reasonably in accordance with this Court's practices; but, failing that, we will be talking about a [18] maximum of 30 or 35 witnesses.

THE COURT: 30 to 35?

MR. SCHATTEN: Most of whom would be short. There are a number of document witnesses and the like.

\* \* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S. 74 Cr. 336 CBM

[Memo Endorsed]

UNITED STATES OF AMERICA

—v—

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas",  
a/k/a "John A. August", DEFENDANTS

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that, at a time and place convenient to the Court, the Government will move this Court for an order adjourning the trial of the above-entitled case, presently scheduled for November 18, 1974, for a period of approximately 90 days or until the apprehension of the fugitive co-defendant Flynn, whichever period is shorter.

This motion is based on this notice, the annexed affidavit of Assistant United States Attorney Steven A. Schatten for the Government, and all the papers and proceedings heretofore in this case.

Dated: New York, New York  
November 1, 1974.

Yours, etc.

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for the United States of America

By: /s/ STEVEN A. SCHATTEN  
Assistant United States Attorney

TO: RONALD J. CHISHOLM, ESQ.  
 Three Center Plaza  
 Boston, Massachusetts 02108  
 (Attorney for defendant Ford)

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

S. 74 Cr. 336 (CBM)

UNITED STATES OF AMERICA

v.

JAMES PATRICK FLYNN AND  
 RICHARD THOMSON FORD,  
 a/k/a "Vincent A. Thomas",  
 a/k/a "John A. August", DEFENDANTS

AFFIDAVIT

STATE OF NEW YORK )  
 COUNTY OF NEW YORK ) ss.:  
 SOUTHERN DISTRICT OF NEW YORK )

STEVEN A. SCHATTEN, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and have responsibility for the prosecution of the above-captioned case. I make this affidavit in support of the Government's motion for an adjournment of the trial of this case, presently scheduled (as to defendant Ford) for November 18, 1974, for a period of approximately 90 days or until the apprehension of the fugitive co-defendant Flynn, whichever period is shorter.

2. The Government respectfully submits that such an adjournment would fully comport with this District's Plan for Achieving Prompt Disposition of Criminal Cases (the "Speedy Trial Rules"), would be in the best interests of justice and judicial management, and would not prejudice defendant Ford in any material respect.



3. Ford escaped from a Massachusetts prison sometime prior to 1970 (I believe, 1968). A Massachusetts warrant charging him with escape and assault with intent to murder issued as a result. The Government expects to prove that in 1971, while living in Greenwood Lake, New York, under the alias "Vincent A. Thomas," he joined with co-defendant Flynn and others to commit the armed bank robbery and ancillary crimes charged in the instant indictment. At any rate, a federal warrant based on a complaint charging Ford with the bank robbery was issued in 1971. Ford, however, remained a fugitive until October 11, 1973, when he was captured in Chicago under the name "John A. August."

4. Upon his capture, Ford was turned over to Massachusetts authorities to stand trial on the prior state charges, and the federal warrant was lodged as a detainer. (About this same time, Ford wrote a letter to the Southern District of New York requesting a Speedy Trial on the federal charges.) On February 8, 1974, midway through his trial in Massachusetts, Ford changed his plea to one of guilty on charges of escape, assault with intent to murder, and related charges. He was sentenced forthwith to concurrent terms of 8 to 10 years imprisonment, which term he is presently serving. The judgments were entered that same date, February 8, 1974.

5. Hence, February 8, 1974, is, at earliest, the date on which the "six-month period" under the Speedy Trial Rules began to run as to Ford.\* This is because the period prior to October 11, 1973, during which time he was a fugitive, is a period excluded from the six-month computation by virtue of Rule 5(d) of the Speedy Trial Rules, which treats as an excluded period "The period of delay resulting from the absence or unavailability of the defendant." Similarly, the period from October 11, 1973, until the disposition of the Massachusetts charges on February 8, 1974, is an excluded period by virtue of any of three separate provisions: Rule 5(d), *supra*; Rule 5(f),

\* The shorter, "three-month period" for detained defendants does not apply to "any defendant who is serving a term of imprisonment for another offense . . . ." Rule 3 of the Speedy Trial Rules.

which excludes "The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial;"\*\* and, particularly, Rule 5(a), which excludes "The period of delay while proceedings concerning the defendant are pending, including but not limited to . . . trial of other charges, and the period during which such matters are *sub judice*." See, *e.g.*, *United States v. Cangiano*, 491 F.2d 906, 909 (2d Cir. 1974).

6. On March 21, 1974, a two-count Indictment (74 Cr. 279), charging Ford with the 1971 armed bank robbery, was filed in this District. Ford was arraigned before Judge Tenney on April 1st at which time he refused to be fingerprinted. The case was assigned to Judge Bauman for all purposes. Also on April 1st, the Government filed a notice of readiness as to defendant Ford.

7. On April 3, 1974, the Grand Jury voted a superseding indictment, charging Ford, Flynn and others unnamed, with the bank robbery, conspiracy, and related crimes. Flynn, who had appeared before the Grand Jury in March (*at which time he was represented by Ford's present attorney, Ronald Chisholm*), appears to have become a fugitive immediately thereafter. As of now, he still has not been apprehended. Accordingly, none of the "six-month period" has run as to Flynn. Rule 5(d), *supra*.

8. On April 15, 1974, Ford, now represented by Mr. Chisholm, entered a not guilty plea to the present indictment. Ford was given 10 days for motions. A hearing was also held on the Government's motion (first made on April 1st) for physical exemplars; when Ford refused to provide handwriting, handprinting, and hair samples, he was given one week to comply with this Court's order to furnish the same or else face contempt.

9. On April 25, 1974, following Ford's continued non-compliance with respect to the furnishing of hair samples, Ford was held in civil contempt by this Court and

\*\* The "reasonable efforts" provision, in a context such as this, appears to be satisfied by filing a detainer, as was done here. See Rule 9(b)(ii), Speedy Trial Rules.

warned of the further possibility of criminal contempt. Also, on April 25th, this Court ruled on defendant's pre-trial motions, made that same day. But as of now, Ford still has not complied with this Court's order.

10. On May 16, 1974, the Government filed a motion for an order adjourning the trial of this case for a period of 90 days or until the apprehension of the fugitive co-defendant Flynn, whichever period was shorter. The Government's motion was granted by Judge Bauman.

11. In August 1974, this case was reassigned to the Hon. Constance Baker Motley, United States District Judge, and trial was set down for November 18, 1974.

# I. THE INTERESTS OF JUSTICE AND SOUND JUDICIAL MANAGEMENT SUPPORT THE REQUESTED ADJOURNMENT, AND DEFENDANT IS NOT PREJUDICED BY IT.

12. The underlying fact which forces the Government to request this adjournment is that the co-defendant Flynn took flight at the time of his indictment and has not been apprehended. While, of course, there is no guarantee that Flynn can be apprehended within any given period of adjournment, the Government respectfully submits, that, given all of the circumstances here involved the Government is entitled to an additional, reasonable further delay in order to try to apprehend him.

13. The reasons why the fugitive status of Flynn warrants an adjournment with respect to the incarcerated co-defendant Ford are two, each of which, incidentally, constitutes grounds of delay under the Speedy Trial Rules.

14. First, the need to try the case twice would put an unwarranted strain on the time and resources of the Government and this Court. This case involves no ordinary bank robbery, but rather a far-flung conspiracy which was calculated to conceal the identities of the robbers and which entailed, merely by way of preparation for the robbery, the commission of substantive crimes in at least three States. (The robbery itself netted over \$200,000.) At present the Government, even if it puts

on a "thin" case, anticipates that it will have to call a minimum of 27 witnesses from all over the country. The Government submits that sound management warrants avoidance of having not one but two trials of this length, when there is a realistic possibility that the fugitive Flynn can be apprehended and there is no compelling reason to move forward as to the non-fugitive Ford.

15. Second, of course, the Court is already aware from the Government's representations at the October 16, 1974 hearing that the fugitive Flynn is a former felon (having at least three prior convictions for such crimes as armed robbery); and Flynn is considered by the FBI to be armed and dangerous and thus, inherently, a potential danger to Government witnesses. Specifically, this danger was brought to the attention of the Court on April 25 and again on October 16, in the context of defendant's motions for the names of Government witnesses. The Government opposed motions stating at the April 25 hearing

"We do object to revealing the persons to whom the photo spreads were shown, because one of the defendants here is a fugitive armed and dangerous, and we feel there is a danger for that reason."  
(April 25 Hearing Transcript, pp. 3-4)

In ruling in the Government's favor on this point on both occasions, this Court has indicated to defense counsel (who, as noted, *was previously counsel for the fugitive as well*):

"Let me make this clear to you. I am not going to do anything that will identify the prospective identification witnesses to you. What I will do is to cause to be made available to you the spread of pictures so that you can see those pictures so that you can be prepared for whatever kind of identification hearings you want in the light of having seen the spread of the pictures. Is that clear? But I certainly am not going to have you told the names of the people who have made the identification, where one dangerous criminal is walking the streets. Now,



I am not—I have not lost my senses yet and I suggest that I am not about to do that.” (April 25 Hearing Transcript, p. 8)

See also October 16 Hearing Transcript.

The Government submits that these same strong considerations that prompted this Court on April 25 and once again on October 16 to deny identification of the Government witnesses to defense counsel prior to the Ford trial, so long as Flynn was a fugitive, just as strongly warrant adjournment of the trial altogether while Flynn remains a fugitive and while there is no compelling reason against a few months' adjournment for the purpose of trying to apprehend the fugitive.

16. Each of the above considerations finds support in particular provisions of the Speedy Trial Rules. To begin with, the general provision of Rule 5(h) providing for a “period of delay occasioned by exceptional circumstances” has been applied by our Court of Appeals to sanction delay in situations generally analogous to the present one. For example, in *United States v. Rollins*, 487 F.2d (2d Cir. 1973), the Government, without even notifying the Court, failed to bring the case to trial within six months, partly from inexcusable inadvertence but partly because the Government's secret witness was himself under suspicion in another investigation that might be compromised if he took the stand and revealed his cooperation with the Government. The Court of Appeals, applying Rule 5(h), refused to dismiss the indictment, stating “the public interest in prompt adjudication must be balanced against competing interests.” (487 F.2d at 414). Similarly, in *United States v. Cuomo*, 479 F.2d 688 (2d Cir. 1973), *cert. denied* — U.S. — (1974), a ninety-day adjournment to protect the safety and usefulness of an informant was held to be an “excluded period” in terms of the Speedy Trial Rules.

17. A more specific provision of the Speedy Trial Rules that is also very much in point is Rule 5(e), providing for “A reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial has not run and there is good

cause for not granting a severance.” \* Applying this provision very recently in *United States v. Cangliano*, 491 F.2d 906, 909, our Court of Appeals found “good cause” for not granting a severance in the mere fact that the defendant there had not specifically moved for a severance and did not, in any case, make any showing or prejudice suffered from the delay resulting from the lack of severance. Here, likewise, defendant Ford has neither specifically moved for a severance nor made any showing of prejudice from delay (as set forth below, there is no prejudice). But, additionally, in the present case there are the positive reasons to avoid severance, already set forth above, if possible, until Flynn is apprehended.

18. Finally, defendant Ford will not in any way be prejudiced by the proposed 90-day adjournment. Ford himself is now serving of several 8-10 year concurrent sentences imposed last February; his personal freedom will thus, not be in any way curtailed by the adjournment. As to the preparation of his defense, the adjournment can only aid it. If the adjournment is granted, Ford will undoubtedly continue to remain in the Walpole, Massachusetts prison where he is serving his present sentence, and thus will be readily available to Mr. Chisholm for pre-trial consultations.

## II. THE ADJOURNMENT WILL COMPORT WITH THE SPEEDY TRIAL RULES

19. Some or all of the period from April 1st to the present must be excluded from the computation of the six month period that began to run on February 8, 1974, for at least two reasons:

20. First, under Rule 5(a), there must be excluded “The period of delay while proceedings concerning the defendant are pending, including but not limited to pre-trial motions . . . trial of other charges . . . and the

\* Rule 5(e) continued: “In all other case the defendant should be granted a severance so that he may be tried within the time limits applicable to his case.”



period during which such matters are *sub judice*." The Government's pre-trial motion that defendant furnish various physical exemplars, including fingerprints, handwriting, handprinting, and hair samples, was first made orally before Judge Tenney on April 1st and then, when the case was assigned to Judge Bauman, made in writing in motion papers filed April 2, 1974. This motion, and the attendant contempt proceedings, were not completed (if, indeed, they can be said to be completed as of now, since criminal contempt proceedings against Ford are still pending unless he purges himself of his civil contempt) until April 25, 1974, when this Court found Ford in civil contempt. Thus, the period from April 1st through April 1st through April 25th should be excluded from computation of the six-month period.

21. Second, Rule 5(c) (i) excludes from the six-month period the period of time during which "evidence material to the government's case is unavailable, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period." Clearly, the Government has exercised due diligence in an attempt to obtain evidence of defendants hair samples. There would appear to be some reasonable grounds, moreover, for believing that the defendant Ford will eventually make this evidence available, since he for some time also refused, but eventually complied, with Court orders to supply fingerprints (admittedly not nearly so vital in this case, since the bank robbers wore gloves) and handwriting and handprinting (also, admittedly, of less value on the facts of this case). Alternatively, even if there is no longer any reasonable expectation that defendant will supply the hair samples (or, what is the same thing, supply them in time that a pre-trial scientific comparison can be made), surely defendant is estopped from invoking the benefits of the Speedy Trial Rule when he himself is the sole cause of the unavailability of potentially crucial evidence without which the Government will be forced, through no fault of its own, to go to trial less materially prepared than it ought to be. In short, it is submitted that, pursuant

to Rule 5(c) (i), there should be excluded from the six month period the entire time from April 1st through the present (and continuing), in which defendant has refused to make material evidence available—at least until such time as the Court concludes that there is no reasonable ground for supposing that such evidence will become available within a reasonable period.

22. If the entire period from April 1st through the present is excluded from the six-months computation, only 51 days of the 180 days grace-period permitted by the Speedy Trial Rules has actually run, *i.e.*, February 9, 1974, through March 31, 1974. (The letter of the Speedy Trial Rules binds the Government to be ready for trial, but it does not bind the Court in actually setting a trial date, *United States v. Cacciatore*, 487 F.2d 240, 243, n.2 (2d Cir. 1973)—although it, of course, furnishes a kind of guideline against which this Court can utilize to ascertain the reasonable exercise of its discretion.)

WHEREFORE, the Government respectfully requests that this Court adjourn the trial of the instant case for approximately 90 days from the presently scheduled trial date (November 18, 1974) or until the apprehension of the fugitive co-defendant Flynn, which ever period is less.

/s/ Steven A. Schatten  
STEVEN A. SCHATTEN  
Assistant United States Attorney

Sworn to before me this 1st day of November, 1974.

/s/ Alma Hanson  
ALMA HANSON  
Notary Public, State of New York  
No. 24-6753450 Qualified in Kings Co.

Certificate filed in New York County

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S. 74 Cr. 336 (CBM)

[Filed Nov. 6, 1974]

UNITED STATES OF AMERICA

—v—

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas,"  
a/k/a "John A. August", DEFENDANTS

NOTICE OF MOTION & AFFIDAVIT

PAUL J. CURRAN  
United States Attorney  
Attorney for USA  
Tel. 791-1931

The written motion is granted. The trial of this action is scheduled to begin on February 18, 1975 as to defendant Ford.

Dated: N.Y., N.Y.  
11/4/74

SO ORDERED  
/s/ Constance Baker Motley  
U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S. 74 Cr. 336 CBM

[Memo Endorsed]

UNITED STATES OF AMERICA

—v—

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas,"  
a/k/a "John A. August", DEFENDANTS

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that, at a time and place convenient to the Court, the defendant will move this Court for an order dismissing the indictment as to the defendant Richard T. Ford for the reasons that he has been denied his rights to a speedy trial as guaranteed to him by the Federal Constitution and the Rules of the Southern District of New York.

This motion is based on this notice, the annexed affidavit of Ronald J. Chisholm and all the papers and proceedings heretofore in this case.

DATED: Boston, Massachusetts  
November 4, 1974.

Yours, etc.

/s/ Ronald J. Chisholm  
RONALD J. CHISHOLM  
Attorney for Richard T. Ford

TO: STEVEN A. SCHATTEN, ESQUIRE  
Assistant United States Attorney  
Southern District of New York

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S. 74 Cr. 336 (CBM)

UNITED STATES OF AMERICA

—v—

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas,"  
a/k/a "John A. August", DEFENDANTS

AFFIDAVIT

STATE OF MASSACHUSETTS: )  
COUNTY OF SUFFOLK: ) ss.

RONALD J. CHISHOLM, being duly sworn, deposes and says:

1. I am attorney for defendant Richard T. Ford in the above case. I make this affidavit in support of the defendant Ford's Motion for Dismissal.

2. The defendant Ford was arrested on or about October 11, 1973 in Chicago on a warrant charging Ford with robbery, the subject matter of this indictment on a complaint that was issued November 11, 1971.

3. When Ford was arrested by federal authorities he was not brought to this jurisdiction to answer to this charge but instead was turned over to Massachusetts authorities to answer to other charges pending in the Commonwealth of Massachusetts.

4. A few days after being arrested in Chicago defendant Ford wrote a letter dated September 28, 1973 (undoubtedly meant to be October 28, 1973) to the U.S. Chief Justice for the Southern District of New York in-

sisting upon a speedy trial. A copy is attached hereto marked Exhibit A. Defendant Ford also wrote an identical letter to the United States Attorney for the Southern District of New York insisting on a speedy trial. A copy is attached hereto marked Exhibit B.

5. In March, 1974 Ford was indicted by the Grand Jury of the Southern District of New York for this offense.

6. On April 1, 1974 Ford was brought before this Court for arraignment but the arraignment was continued until April 8, 1974 to allow Ford the opportunity to obtain counsel.

7. On April 1, 1974 the government filed an affidavit of readiness.

8. On April 3, 1974 Ford's arraignment was continued until April 15, 1974. On April 3, 1974 the Grand Jury voted a superseding indictment charging Ford and others with the same robbery.

9. On April 15, 1974 Ford was arraigned on this indictment and pleaded not guilty.

10. On April 25, 1974 pretrial motions were heard. On April 25, 1974 the Court set May 28, 1974 for trial of this indictment (co-defendant Flynn was defaulted on April 15, 1974).

11. On May 22, 1974 Judge Bauman granted the government's motion for a continuance of ninety days or until the apprehension of co-defendant Flynn, whichever occurred first. This motion was granted over the defendant's objection and the case was set for trial for August 21, 1974.

12. Approximately August 16, 1974 I received notice that the defendant Ford's trial had been continued until November 18, 1974. This continuance was without the defendant Ford's assent and over his objection.

13. The government admittedly has exculpatory evidence which it refuses to disclose until after the trial has commenced. This exculpatory evidence is not documentary but identification evidence previously brought to the Court's attention on other motions. This evidence may not be available at a later time or if it is the quality may be weakened through the lapse of time.



14. The defendant Ford is being denied furlough privileges afforded to him by the Commonwealth of Massachusetts while serving a sentence in Massachusetts while a detainer on this charge is lodged against him.

WHEREFORE, the defendant Ford respectfully requests that this Court dismiss the indictment as to him.

/s/ Ronald J. Chisholm  
RONALD J. CHISHOLM  
Attorney for defendant Ford

Sworn to before me this 4th day of November, 1974.

/s/ Albert J. Capone, Jr.  
Notary Public

My commission expires: April 29, 1977

[SEAL]

## EXHIBIT A

9-28-73  
Mr. Richard Ford  
Registered #7306192  
Tier H-2 Cell  
2600 California Ave.  
Chicago, Ill.

U.S. Chief Justice for Southern District of New York  
United States Court House  
Foley Square  
New York City, New York

Dear Sir:

I am taking this opportunity to advise you that I, Richard Ford, am presently in the custody of the Cook County Sheriff, State of Illinois, awaiting extradition to the State of Massachusetts, Essex County House of Correction to stand trial for escape.

This is to further advise you that the Federal authorities in and for the People of the United States of America, Southern District of New York have placed a Federal Detainer against me for Bank Robbery (information # U.S.C. 2113-A and 2)

Therefore, I, Richard Ford, ask this Honorable Court to move in the following matter:

(1) That you make a Certified Copy of this Statement whereby proving that I, Richard Ford, have notified this Honorable Court of my whereabouts, and file same on Court Record.

(2) That this Honorable Court take action upon this Notification of my Whereabouts, and bring petitioner Richard Ford to the State of New York to stand trial for and/or the charges in information # U.S.C. 2113-H- and 2 be dropped.

All this enabling Richard Ford to be Garanteed Equal Protection under the Law; to be tried or released from the charges set forth in information # U.S.C. 2113-H-and 2 in the ammount of time set forth in the United States Constitution.

Petitioner, Richard Ford, retains the Right to a Speedy Trial, as well as his plea of not guilty.

Richard Ford further states that this is not a petition—but a letter asking for my Constitutional Rights to a Speedy Trial.

Sincerely

Richard Ford

R.F. Enclosures: one

EXHIBIT B

9-28-73

Mr. Richard Ford  
Registered #7308694  
Tier H-2 Cell  
2600 California Ave.  
Chicago, Illinois 60608

U.S. Attorney for Southern District of New York  
United States Court House  
Foley Square  
New York City, New York

Dear Sir:

I am taking this opportunity to advise a duly authorized representative of the People of the United States of America, that I, Richard Ford, am presently in the custody of the Cook County Sheriff, State of Illinois; awaiting extradition to the State of Massachusetts, Essex County House of Correction to stand trial for escape.

This is to further advise you that the Federal authorities in and for the People of the United States, Southern District of New York, have place a Federal Detainer against me for Bank Robbery. (Information # U.S.C. 2112-A-and 2)

Therefore, I petition you, a duly authorized Attorney for the people of the United States of America, Southern District of New York, as follows:

(1.) That you make Certified Copies of this Statement, whereby proving that I, Richard Ford, have notified the Court as to my whereabouts, and filing same on Court Record.

(2.) That you take action on this notification of my whereabouts and bring petitioner, Richard Ford to the State of New York to stand trial for and/or the charges alleged in information # U.S.C. 2113-A-and 2 be dismissed.

All this enabling petitioner, Richard Ford, to be Guaranteed Equal Protection under the law; to be tried or re-

leased from charges set forth in information #U.S.C. A-and 2—in the amount of time set forth in United States Constitution.

Petitioner, Richard Ford, retains the Right to a Speedy Trial, as well as his plea of not guilty.

Petitioner further states he is not a well educated man. This is not a petition but a letter asking for my Constitutional Rights.

Sincerely

Richard Ford

R.F. Enclosures: one

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S. 74 Cr. 336 (CBM)

[Filed Nov. 6, 1974]

UNITED STATES OF AMERICA

—v.—

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas",  
a/k/a "John A. August", DEFENDANTS

NOTICE OF MOTION AND AFFIDAVIT

RONALD J. CHISHOLM, ESQUIRE  
Three Center Plaza  
Boston, Massachusetts 02108  
(617) 426-8688

For the reasons set forth in the record this date, the written motion is denied.

SO ORDERED

Dated: N.Y., N.Y.  
11/4/74

/s/ Constance Baker Motley  
U.S.D.J.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Cr. 336

UNITED STATES OF AMERICA

v.

JAMES PATRICK FLYNN, AND  
RICHARD THOMSON FORD, DEFENDANTS

February 18, 1975  
10 a.m.

BEFORE: HON. CONSTANCE BAKER MOTLEY, Dis-  
trict Judge

APPEARANCES:

Don Buchwald, Esq.,  
Assistant United States Attorney

Ronald Chisholm, Esq.,  
Attorney for Defendant Ford

[2] THE COURT: This case, I gather, gentlemen, was supposed to proceed to trial today.

MR. BUCHWALD: That's correct, your Honor.

THE COURT: What's happened here is that I have been on trial in a case since January 22nd, I believe. It was scheduled to go to trial January 14, and there was a stay pending an appeal to the Court of Appeals for a week. After that both United States Attorneys were ill, and that effectively caused a delay of a week. We have just lost two additional days, last Friday and yesterday.

The long and short of which is we have not yet completed the trial now on trial. Since this case involves out of town counsel I thought you should come in and

we would try to set a date certain, while I continue with the case.

I think that is what we should do now. Are all parties represented? Do you represent both defendants?

MR. CHISHOLM: No, your Honor, just the defendant Ford.

MR. BUCHWALD: The defendant Flynn is still in a fugitive status, your Honor, and though Mr. Chisholm will represent him at one point in the proceeding it appears we will be proceeding against Mr. Ford alone unless Mr. Flynn is apprehended in the interim.

[3] THE COURT: I see.

MR. BUCHWALD: With respect to the matter of a new date, your Honor, while the government has no particular preference in the matter we would hope that any date set could be set with a view toward making it most probable, but we could proceed in view of the fact that we would estimate over thirty witnesses, most of whom are civilian witnesses, not agents, who live—we have witnesses from upstate New York, California, Chicago, and while we don't think that the trial will be as long as the number of witnesses would indicate, because a number of them are relatively short witnesses, we would hope that the subpoenas we hand out, that the people can be here.

I am trying to get them to juggle their vacation schedules to meet the needs of the trial.

THE COURT: How long do you estimate it will take the government to put on its case?

MR. BUCHWALD: I have discussed various stipulations with Mr. Chisholm this morning, and in view of some of the stipulations we have tentatively agreed upon I would think five or six trial days. I would think that that is probably realistic. I might be a little bit optimistic, but I would think five or six trial days for the government's case.

[4] THE COURT: It will be set for Wednesday, June 11th, at ten o'clock.

MR. CHISHOLM: May I just say for the record, your Honor, that the defendant Ford would object to the continuance for such a long period of time. I do realize the

Court has a case on trial now, but in view of his former motion to dismiss because of being denied a speedy trial, I think I have to be consistent.

THE COURT: The only thing I can say, Mr. Chisholm, is that when this trial is over we can try to move the date up. When the case is over I will contact you to try to advance the date. But from looking at my calendar now this is the earliest date that I will be able to try it.

I will review the matter after the instant trial is over.

MR. BUCHWALD: Thank you, your Honor.

(Time noted: 10:15 a.m.)

DDB:ais  
71-3397

March 28, 1975

Honorable Constance Baker Motley  
United States District Judge  
Southern District of New York  
Federal Courthouse  
Room 2001  
Foley Square  
New York, New York 10007

Re: United States v. Ford and Flynn; S74 Cr. 279

Dear Judge Motley:

I am writing in connection with the above matter which is presently on Your Honor's calendar for trial of defendant Richard Ford on June 11, 1975. It has been estimated that the trial will last one to two weeks. It is a case involving an alleged \$200,000 robbery in 1971 of a bank in Middletown, New York. The co-defendant, Flynn, is in a fugitive status. Ford is presently incarcerated as a result of an unrelated Massachusetts conviction.

Opposing counsel and myself have entered into a number of stipulations and are considering orders which I hope will reduce the number of witnesses and the length of trial. Nonetheless, at the present, the Government contemplates calling in excess of 30 witnesses, most of whom are not law enforcement agents and some of whom live at great distance from New York. Since the setting of the June 11th trial date, the District Court has indicated that the month of June will be largely devoted to the trial of civil cases.

In view of the number of witnesses on call and their often expressed desire to be notified as far as in advance as possible of any change in the trial date, so that they might plan their own personal work schedules and vaca-

tions. Accordingly, I would most appreciate being advised by the Court of the present status of this matter on Your Honor's calendar.

Respectfully yours,

PAUL J. CURRAN  
United States Attorney

By: \_\_\_\_\_  
DON D. BUCHWALD  
Assistant United States Attorney  
Telephone (212) 791-1921

cc: Ronald J. Chisholm, Esq.  
Three Center Plaza  
Boston, Massachusetts 02108

DB:js  
71-3397

April 28, 1975

Ronald J. Chisholm, Esq.  
Three Center Plaza  
Boston, Massachusetts 02108

Re: United States v. Richard T. Ford;  
S 74 Cr. 336 (CBM)

Dear Mr. Chisholm:

In connection with the trial of the above-mentioned matter, presently scheduled for September 2, 1975 I am enclosing herewith:

(a) the original and two copies of a proposed stipulation pertaining to the testimony of Joan L. Swift, County Recorder of Clark County, Nevada, concerning, more particularly, the marriage of your client (under the name Joseph Michael Fitzgerald)

to his wife, Ellen G. Dempsey, on February 4, 1970. In connection with this matter which we have previously discussed, I am also enclosing a copy of an FBI Report pertaining thereto;

(b) the original and two copies of an updated "Hertz" stipulation which you have indicated you will recommend to your client. Copies of the relevant FBI reports pertaining to this testimony have previously been furnished to you.

Please execute and return to me the original and one copy of each stipulation (retaining one copy for your files). Please advise as soon as possible if either stipulation is unsatisfactory.

Very truly yours,

PAUL J. CURRAN  
United States Attorney

By: \_\_\_\_\_  
DON D. BUCHWALD  
Assistant United States Attorney  
Telephone: (212) 791-1989

Enclosures



USA-33s-19—p. 1—AFF. FOR W/H/C AD PROS.  
 Rev. 1/30/74  
 DDB:cf  
 71-3397

[Writ Iss. Ret. Pet. 9/2/75]

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

S 74 Cr. 336 (CBM)

[Filed Aug. 8, 1975]

UNITED STATES OF AMERICA

—v—

RICHARD FORD, DEFENDANT

AFFIDAVIT

STATE OF NEW YORK )  
 COUNTY OF NEW YORK : ss.:  
 SOUTHERN DISTRICT OF NEW YORK )

DON D. BUCHWALD, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York; that he has charge of the prosecution of the above named case; that the defendant RICHARD FORD has been indicted by the Grand Jury for the Southern District of New York for the unlawful robbery of a bank in violation of 18 U.S.C. § 2113(a). The indictment was filed in the United States District Court for the Southern District of New York on \_\_\_\_\_. The defendant is now confined in Massachusetts Correctional Institute—Norfolk as Prisoner No. 21646 on a charge of violating sections of

state law involving prison escape and attempted murder and his confinement will terminate at a time unknown to deponent.

That the case is now on the calendar of the United States District Court for the Southern District of New York for September 2, 1975 at 9:30 a.m. in Courtroom 318 and it is necessary that the defendant appear and stand trial at that time.

WHEREFORE, your deponent respectfully prays that a writ of habeas corpus ad prosequendum issue, directing the Warden of Massachusetts Correctional Institute-Norfolk, Massachusetts and the United States Marshal for the Southern District of New York to produce the above named defendant in the United States District Court for the Southern District of New York, United States Court House, Foley Square, New York, N.Y., on September 2, 1975 at 9:30 a.m. in Courtroom 318 and after the said defendant has been discharged or convicted and sentenced on said indictment, to return him to the Massachusetts Correctional Institute-Norfolk.

/s/ Don D. Buchwald  
 DON D. BUCHWALD  
 Assistant United States Attorney

Sworn to before me this 8th day of August, 1975

/s/ Alma Hanson  
 ALMA HANSON  
 Notary Public, State of New York  
 No. 24-6763450 Qualified in Kings Co.  
 Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S. 74 Cr. 336 CBM

[Filed in Court Sep. 2, 1975]

[Filed Sep. 4, 1975]

---

UNITED STATES OF AMERICA

v.

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas",  
a/k/a "John A. August", DEFENDANTS

---

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that, at a time and place convenient to the Court, the defendant will move this Court for an order dismissing the indictment as to the defendant Richard T. Ford for the reasons that he has been denied his rights to a speedy trial as guaranteed to him by the Federal Constitution and the Rules of the Southern District of New York.

This motion is based on this notice, the annexed affidavit of Ronald J. Chisholm and all the papers and proceedings heretofore in this case.

DATED: Boston, Massachusetts  
August 29, 1975

Yours, etc.

/s/ Ronald J. Chisholm  
RONALD J. CHISHOLM  
Attorney for Richard T. Ford

The foregoing and attached motion to dismiss for lack of speedy trial denied.

SO ORDERED

N.Y., N.Y.  
9/3/75

/s/ Constance Baker Motley  
U.S.D.J.

DON BUCHWALD, ESQUIRE  
Assistant United States Attorney  
Southern District of New York

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S. 74 Cr. 336 (CBM)

UNITED STATES OF AMERICA

v.

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas",  
a/k/a "John A. August", DEFENDANTS

AFFIDAVIT

STATE OF MASSACHUSETTS: )  
COUNTY OF SUFFOLK: ) ss.

RONALD J. CHISHOLM, being duly sworn, deposes and says:

1. I am attorney for the defendant Richard T. Ford in the above case. I make this affidavit in support of the defendant Ford's Motion for Dismissal.

2. On November 4, 1974, the defendant's Motion to Dismiss the indictment for denial of speedy trial was denied by Judge Motley.

3. On November 4, 1974, Judge Motley set this case for trial for February 18, 1975.

4. On February 18, 1975, Judge Motley set this case for trial for June 11, 1975. This continuance was over the defendant Ford's objection.

5. Prior to June 11, 1975, Assistant United States Attorney, Don Buchwald, advised me that the Court had continued this case to September 2, 1975 for trial. This was without the defendant Ford's consent and over his objection.

WHEREFORE, the defendant Ford respectfully requests that this Court dissmis the indictment as to him.

/s/ Ronald J. Chisholm  
RONALD J. CHISHOLM  
Attorney for defendant Ford

Sworn to before me this 29th day of August, 1975.

/s/ Joseph L. Sullivan  
Notary Public

My commission expires: Feb. 19, 1979



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Cr. 336

UNITED STATES OF AMERICA

v.

JAMES PATRICK FLYNN AND  
RICHARD THOMSON FORD,  
a/k/a "Vincent A. Thomas",  
a/k/a "John A. August", DEFENDANTS

Before: HON. CONSTANCE BAKER MOTLEY, Dis-  
trict Judge.

September 2, 1975  
9:50 a.m.

APPEARANCES:

For the Government:

DON BUCHWALD, ESQ.,  
Assistant United States Attorney

For the Defendant Ford:

RONALD CHISOLM, ESQ.

[2] (In the robing room)

THE COURT: Are there any open or pending matters we ought to take up before the panel is brought up?

MR. CHISHOLM: I have one, your Honor. The defendant Ford previously filed a motion to dismiss for lack of speedy trial which your Honor has ruled on some months back and I just want to renew that motion to bring it up to date, to give him the maximum number of days.

THE COURT: Do you want to refresh my recollection as to the grounds of that motion?

MR. CHISOLM: The defendant was indicted back in—

THE COURT: April 3rd, 1974.

MR. CHISOLM: And the case had been continued from time to time and then of course there was a former judge on the matter and it was reassigned to you, as I recall some of the background.

At any rate, there was a hearing before you—I have the dates in my file—but a hearing before you some number of months ago on the motion to dismiss for lack of speedy trial and you denied it and I just wanted at this time to renew it.

THE COURT: Do you recall what your grounds [3] for the motion were? If not, we can take it up later.

MR. CHISOLM: I don't want to leave anything out. It's really the length of time, in essence. There are other reasons about him being denied furlough rights which he would have—he is presently serving a sentence in a Massachusetts institution and he would have certain rights if he didn't have to go to trial here.

THE COURT: Suppose we go over that after. I will look at it again after the jury selection and during the lunch hour.

MR. CHISOLM: This just incorporates the former motion. On November 4, 1974, your Honor, you denied the motion to dismiss for denial of speedy trial.

. . . .

[186] THE COURT: Mr. Chisolm, yesterday, at the commencement of the trial, you handed up a motion to dismiss the indictment for lack of speedy trial, on which I postponed decision, do you recall that, until I could look over the motion and refresh my recollection as to what had previously transpired.

I have done that now and the motion is denied and I have written an order on the face of the motion.

We will recess now for a few minutes.

(Recess)

. . . .

[657] JOSEPH B. HENDERSON, called as a witness by the government, being first duly sworn, testified as follows:

# DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Henderson, by whom are you employed, sir?

A The Federal Bureau of Investigation.

Q In what capacity?

A I am a special agent.

Q Where are you based?

A I'm currently assigned to the Chicago division.

Q Were you in the Chicago division in 1973?

A I was.

Q Let me direct your attention, if I might, to October 11, 1973. Were you on duty on that day?

A I was.

Q On that day, did you go to a certain apartment building in Chicago?

A I did.

Q Do you remember the street address of the apartment building?

A I believe it is 516 West Melrose in Chicago.

[658] Q Chicago, Illinois?

A Yes.

Q How many other agents from the FBI office were with you?

A Six other agents, I believe.

Q What did you do when you arrived at 516 West Melrose?

A I displayed some photographs of Richard Thomson Ford, and determined that he was living on the fifth floor of the apartment at that address.

Q Then what did you do?

A I moved toward the rear portion of the building while other agents remained in the front and two agents went up to the fifth floor of that building.

Q Then what, if anything, happened?

A One of the agents who had been sent upstairs came down the stairs and had a short conversation with me and then returned back upstairs.

I then moved to the rear of the building, in the parking lot, looked up toward the fifth floor and saw Richard Thomson Ford hanging by a rope between the fifth and the fourth floor of the building.

[659] Q How far up is the fifth floor from the ground where you were?

A I would estimate 40 to 50 feet.

Q How long was this rope? Was it coming out of a window?

A It was protruding out of a window.

Q How far out of the window did it come down?

A I would estimate perhaps 15 feet of the ground. 15 to 20 feet of the ground.

Q So it didn't get all the way down to the ground?

A No, it didn't come all the way down.

Q How far down had Mr. Ford—withdrawn.

How far down had Mr. Ford proceeded?

A He was sort of between the two floors, completely out of the window, say four, five feet below the window.

Q What, if anything, did you do at that time?

A I identified myself to him as an FBI agent and ordered him to come down the rope.

Q Did he do so?

A Eventually, yes.

Q Were there other FBI agents were you who joined you?

A Yes, sir, at approximately the same time other agents came back to that area and assisted as we brought [660] him down the rope, got him off the rope.

Q Then what, if anything, occurred?

A He was placed under arrest, searched briefly, patted down, handcuffed and transported to our office in Chicago.

. . . .



[670] JOHN J. LOUGHNEY, called as a witness, having been duly sworn, testified as follows:

# DIRECT EXAMINATION

BY MR. BUCHWALD:

Q How do you pronounce your last name again, sir?

A Loughney.

Q Mr. Loughney, by whom are you employed?

A By the FBI.

Q In what capacity, sir?

A Special agent.

Q Where was your office?

A I work in the Chicago office.

Q Were you working in the Chicago office in October of 1973?

A Yes, I was.

Q On October 11th of 1973 did you have occasion to go to premises at 516 West Melrose in Chicago, Illinois?

A Yes, I did.

Q Were you with other agents at that time?

A Yes.

Q Would you describe to the ladies and gentlemen of the jury what you did and what you observed on that occasion?

A Yes. On that date—

[671] Q Let me ask you to speak slowly and keep your voice up, please.

A On that date I was conducting an investigation to locate and apprehend Richard Thomson Ford. I conducted an investigation at that address and determined that Ford was living there in a fifth floor apartment under the name of John August.

Q Had you brought certain photographs with you?

A Yes, I did.

Q Let me show you the photograph, which is part of Government Exhibit 105. Is this the photograph or a blow-up of this photograph that you brought with you?

A Yes. Yes, it is.

Q After determining that the individual depicted in this photograph lived in what apartment?

A I believe it was 507. It was a fifth floor apartment in that building and I observed the bells and mailbox in the lobby of the apartment and it stated that John August lived in the apartment and that he was also the manager of the building.

Q What did you do?

A Well, I stationed agents in the front and back and also two agents on the fifth floor.

A short time later one of the agents on the fifth [672] floor came down. I spoke to him briefly and he returned to the fifth floor.

I then went to the rear parking lot and I looked up and I observed Ford on a rope. The rope was coming out of a fifth floor window.

Q The gentleman you have referred to as Ford, do you see that person in the courtroom today?

A Yes.

Q Would you point to him, please.

A He is sitting there in the gray suit at the defense table with the mustache.

THE COURT: Can't hear you, keep your voice up.

A Yes, he is at the defense table with the gray suit and the mustache.

MR. BUCHWALD: May the record reflect, your Honor, the identification of the defendant?

THE COURT: Yes.

Q Where was he when you observed him?

A When I looked up he was I would say, between the fourth and fifth floor on the rope.

Q What was he doing on the rope?

A Attempting to climb down.

Q And then what happened?

A I identified myself and ordered him to proceed [673] down the rope.

Q Were there other agents with you at this time?



A Yes, at that time approximately four other agents were at that scene.

Q After you finally got him to the ground level, what, if anything, did you do?

A I placed him under arrest, searched him.

Q Were you one of the agents who proceeded back to the office with Mr. Ford?

A Yes, I was.

Q Did there come a time when through your search of Mr. Ford you found various items on his person?

A Yes. Back at the Chicago office of the FBI we went through the contents of his pockets and his wallet and we found several items of identification in the name of John August.

. . . . .

[678] CROSS-EXAMINATION

BY MR. CHISOLM:

Q Agent Loughney, when you went to the premises on West Melrose Street on October 11, 1973, you went there to arrest Mr. August or Mr. Ford?

A Yes, sir.

Q And there was a warrant outstanding for unlawful flight to avoid prosecution from Massachusetts issued in 1969 for escape, isn't that true?

A The warrant was unlawful flight to avoid confinement, for escape and assault with intent to commit murder.

Q That was issued in 1969?

A I am not sure of the date of the issuance.

. . . . .

[680] REDIRECT EXAMINATION

BY MR. BUCHWALD

. . . . .

[681] Q Now, I believe you indicated in response to a question from Mr. Chisolm that at the time of the arrest

you had with you a warrant for unlawful flight to avoid prosecution. Would you explain to the ladies and gentlemen of the jury what unlawful—whether the underlying offense for the flight is a state offense or a federal offense?

A Yes. The underlying offense in this case escape and assault with intent to commit murder are state charges.

A federal warrant was issued for the unlawful flight.

[682] Q When someone crossed the state line?

A Right.

Q Was there also at that time a second warrant?

A Yes, there was. There was a bank robbery warrant out of New York for Ford's arrest.

Q That was for this case?

A Yes.

. . . . .

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Cr. 336

UNITED STATES OF AMERICA

vs.

RICHARD THOMSON FORD, DEFENDANT

Before; HON. CONSTANCE BAKER MOTLEY, Dis-  
trict Judge.

New York, October 14, 1975;  
9:30 o'clock a.m.

(Room 1106)

APPEARANCES:

PAUL J. CURRAN, Esq.,  
United States Attorney for the  
Southern District of New York;

BY: DON BUCHWALD, Esq.,  
Assistant United States Attorney.

RONALD CHISHOLM, Esq.,  
Attorney for the Defendant.

[5] MR. CHISHOLM: The presentence report, he went as far as the eighth grade in public school but it is my understanding that since his recent incarceration in State Prison in Massachusetts that he has completed an high school education or equivalency and has a high school diploma and has gone as far as one year in obtaining

one year's college [6] credits under his present incarceration.

[10] THE COURT: When did he earn the high school equivalency diploma?

MR. CHISHOLM: That was since he has been in jail in the State Prison in Massachusetts.

THE COURT: Since last year?

MR. CHISHOLM: It is my understanding, your Honor.

(Pause.)

MR. CHISHOLM: After he was returned to Massachusetts, after being arrested in Chicago as your Honor heard by FBI agents in 1973, he was returned to Massachusetts and he earned it at that time while in custody, while in prison.

[15] THE COURT: \* \* \* As the result apparently you turned to a life of crime as a result of that. However, there are indications that given the opportunity for training and time for reflection upon the way in which you might change the direction of your life, there is some hope for you that after serving your present term you will be able to redirect your life in a more constructive fashion.

The Court is impressed with the fact that despite your serious criminal record, you have taken advantage of an opportunity offered to you in the prison at Massachusetts to earn a high school equivalency diploma and you are apparently continuing to take courses beyond that.

It seems to me that a prison sentence in your case beyond ten years might operate to deprive you of the will to continue your efforts to improve yourself personally and redirect your life in a more constructive way.

As I have indicated, there is this hope that you continue service in the Massachusetts prison, when you [16] come out of prison you might have the necessary skills to find employment in an occupation which will enable you to earn a living and not have to resort to criminal activity in order to survive.

With that in mind, the Court here will sentence you to a term of imprisonment to run concurrently with the sentence imposed in Massachusetts, and the reason for that, Mr. Ford, is, as I have indicated, is because it seems to me that a sentence to run more than ten years might have an effect not intended by the Criminal Justice system and that is, as I have indicated, its effect might be to deprive you altogether of the will to change the way in which you have lived.

So with respect to the first count the sentence imposed is a sentence of five years. With respect to the second count, the sentence is five years; with respect to the third count, the sentence is five years, and with respect to the fourth count, the sentence is five years.

Now, each of those sentences are to run concurrently with each other and concurrently with the sentence of eight to ten years imposed in Massachusetts.

\* \* \*

SUPREME COURT OF THE UNITED STATES

No. 77-52

UNITED STATES, PETITIONER

v.

RICHARD THOMPSON FORD

ORDER ALLOWING CERTIORARI. Filed October 3, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is set for argument in tandem with No. 76-1596.